7/1/77 [1]

Folder Citation: Collection: Office of Staff Secretary; Series: Presidential Files; Folder: 7/1/77 [1]; Container 29

To See Complete Finding Aid:
http://www.jimmycarterlibrary.gov/library/findingaids/Staff%20Secretary.pdf

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
memo	From Cutter to The President (5 pp.) re: planned uses for the Space Shuttle/ enclosed in Hutcheson to Brzezinski and Lance 7/1/77	6/30/77	A

FILE LOCATION

Carter Presidential Papers- Staff Offices, Office of the Satff Sec.- Pres. Handwriting File 7/1/77 Box 35

RESTRICTION CODES

(A) Closed by Executive Order 12356 governing access to national security information.
(B) Closed by statute or by the agency which originated the document.
(C) Closed in accordance with restrictions contained in the donor's deed of gift.

10:45

THE WHITE HOUSE

WASHINGTON

July 1, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: JODY POWELL

SUBJECT: Items on the President's Schedule
Friday, July 1, 1977

You are scheduled for three brief meetings on Friday, which have been arranged by the Press Office:

10:45 am - Ray Zook, Chief of the Transportation and Telegraph Office

Ray Zook has been at the White House since the last days of the Truman Administration. He was in the White House Communications Agency during Truman's tenure, and moved to the Transportation Office in 1958 under President Eisenhower.

The Transportation section arranges all press plane flights, teletype communications, hotel reservations -- the logistics of a trip, particularly for the press and press office staff.

Zook has many friends in the media, and that is the reason we're having a short photo session.

He will be accompanied by his wife, Doris, and will, at the end of the meeting, introduce you to his successor, Bob Manning.

Two things you may want to mention:

-- Today is his 50th birthday

-- A picture of Zook and Manning was the cover for PARADE Magazine this past Sunday, and a relatively long, flattering article on his career included in the magazine. You may want to mention how much you enjoyed seeing it.

10:50 am - David Kraslow - Publisher, The Miami News

David Kraslow is leaving as Bureau Chief here for Cox Newspapers to become the Publisher of The Miami News, also owned by the Cox Newspapers.

One item you may want to mention: You're sorry to miss his wife and children. They had to leave earlier in the morning to go to Miami to look for a house, and with the tightness of reservations over the July 4th weekend, were not able to come with him today.

You may want to mention also how much you enjoyed the interview he participated in at your house last summer in Plains.

10:55 am - Fay Wells, Storer Broadcasting

Fay Wells is retiring as the White House correspondent for Storer Broadcasting. She has been here for 13 years.

You'll want to know that Storer is closing out its operation here, and will no longer have a correspondent at the White House.

1:30

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

June 30, 1977

MEETING WITH REP. MIKE McCORMACK (D-WASH 4)
Friday, July 1, 1977
1:30 p.m. (10 minutes)
The Oval Office

From: Frank Moore

I. PURPOSE

To discuss the Clinch River breeder reactor.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: Speaker O'Neill requested this meeting because of Rep. McCormack's strong advocacy of the Clinch River breeder reactor.

The Columbia River flows through McCormack's 4th Washington district, the largest in the state. Yakima (population 45,000) is the district's largest city, and the surrounding valley produces a large share of the state's agricultural crops. The fourth, also, includes ERDA's Hanford Works, where McCormack was employed as a research scientist from 1950-1970. Sen. Jackson campaigned extensively for McCormack's 1970 election to the House and, generally, is credited for swinging the district to the Democrat. The 1972 redistricting to the fourth's present shape was thought to be disadvantageous for Rep. McCormack's re-election, but he won by 52%. In 1974, he won by 59%; in 1976, 57.8%.

Rep. McCormack's power base in the House is his chair of the Advanced Energy Technologies and Energy Conservation Research, Development and Demonstration Subcommittee (Science & Technology). He is, also, a member of Walter Flowers' Fossil and Nuclear Energy Research, Development and Demonstration Subcommittee (which has jurisdiction for the Clinch River breeder reactor.) He, also, serves on the Public Works & Transportation Committee and the Ad Hoc Committee on Energy. Among his credits listed in the Congressional Directory are: author of the Federal Solar Heating and Cooling Demonstration Act of 1974, the Geothermal Research, Development and Demonstration Act of 1974, and the Electric Vehicle Research and Demonstration Act of 1976.

B. Participants: The President
Rep. Mike McCormack
Frank Moore
Jim Free

C. Press Plan: White House photographer

III. TALKING POINTS

1. Rep. McCormack will want to talk you out of moth-balling the Clinch River project. He constantly implies that the Administration is anti-nuclear and anti-breeder. You need to emphasize your support for continued research in nuclear fuel development.

2. Rep. McCormack does not like the Senate compromise of $75 million for the Clinch River breeder reactor any more than we do. He will listen to our proposal but is not likely to change his mind.

3. A firsthand explanation of Admiral Rickover's thorium reactor plant from you would be of interest to Rep. McCormack.

2:00

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

June 30, 1977

MEETING WITH REP. JIM LLOYD (D-CALIF 35)
Friday, July 1, 1977
2:00 p.m. (15 minutes)
The Oval Office

From: Frank Moore FM

I. PURPOSE

To discuss the Middle East.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: Rep. Lloyd is a 21 year Navy veteran and military aviator. His last duty station was as Public Information Officer at the Naval Base Guantanamo Bay, Cuba during the Bay of Pigs and Cuban Missle Crisis. In addition, Rep. Lloyd was a fighter pilot in World War II and Korea and since then, has flown almost every conventional aircraft designed. Recently, Rep. Lloyd spent several days in Israel, during which he had the opportunity to fly the Mirage French fighter plane. Rep. Lloyd serves on the House Armed Services Committee (22) and has been recorded as a supporter of the B-1 bomber.

Rep. Lloyd believes he has a unique perception of attitudes in Israel with regard to our emerging Middle East policy. The fact that he is not part of the traditional "support for Israel" group gives him a perspective that he believes the President should be made strongly aware of.

B. Participants: The President
Rep. Jim Lloyd
Frank Moore
Bill Cable

C. Press Plan: White House photographer only.

X

1:00 p.m.

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

July 1, 1977

MEETING WITH CONGRESSMAN SIDNEY R. YATES (D-Illinois)
Friday, July 1, 1977
1:00 p.m.
The Oval Office

From: Frank Moore F.M.

I. PURPOSE

Sid Yates has requested the opportunity to discuss the Middle East with you.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background: Sid Yates is the senior Jewish Congressman. He is solid, reliable, and highly respected by other Jewish members of the House. He also has a great deal of influence on their thinking. I discussed the advisibility of your meeting with Congressman Yates with both the Vice President and Dr. Brzezinski and they both recommended the meeting as valuable.

Parenthetically, Yates is responsible for appropriations for arts and humanities legislation. He has expressed displeasure at not being included in the Brademas/Pell group on the arts. He will probably not bring this up at your meeting today.

B. Participants: The President, Congressman Yates, Frank Moore

C. Press Plan: White House photo only

THE WHITE HOUSE

WASHINGTON

SENT TO WATSON for Appropriate Handling 7/7

Date: July 1, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat attached
Jack Watson
Bert Lance attached

FOR INFORMATION: Hamilton Jordan n/c

FROM: Rick Hutcheson, Staff Secretary

SUBJECT:

Letter from Robert E. Merriam, Chairman of Commission on Intergovernmental Relations dated June 28, 1977 regarding recommendations pertaining to the Categorical grant system.

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: WEDNESDAY

DAY: 3 P.M.

DATE: July 6, 1977

ACTION REQUESTED:

__X__ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

Jack should handle - don't think should go to Pres. - OK - They will handle it! B

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

July 7, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT
BOB GINSBURG

SUBJECT: Adjustment Assistance Program for the Shoe Industry

General Outline of the Program

The Commerce Department has developed an adjustment assistance program for the shoe industry which has the following principal components:

1. Commerce will encourage the major domestic retailers (Sears, K Mart, etc.) to increase their purchases from the trade-impacted shoe manufacturers. Commerce reports that the retailers have indicated their willingness to participate actively in such a program.

2. Approximately 20 specialist teams will be formed, drawn principally from the private sector, to assist the affected companies in modernization.

3. Financial support would be provided for education and training courses for prospective managers of shoe companies.

4. Financial support would be provided for increased advertising by the domestic industry.

5. Approximately $40 million in loans and loan guarantees would be made available for increased capital investment in the affected companies and for the purpose of facilitating the sale or merger of affected companies.

The program is more fully described in the attached memorandum from Under Secretary Harman. The total cost for the three-year program would be approximately $60 million. No new legislation would be required. The general outline of the program has been approved by the EPG.

There can never be certainty that any adjustment assistance program will work -- it is extremely difficult to achieve a turnaround for a single company let alone a large number of companies in a declining industry. Nevertheless, against that background, we think that Commerce has designed a good program. Both the industry and the shoe unions support the program.

Subject to your separate decision on the advertising component, we recommend that you approve the general outline of the program.

Keep announce - not much fanfare - Emphasize "one-time trial" basis - No precedent being established - No extra budget requests.
J.C.

✓ Approve

___ Disapprove

___ Let's discuss this further

Advertising Component of the Program

Commerce proposes to spend about $1 million per year ($3 million total) to provide financial support for increased advertising by the domestic industry. Commerce argues that there is precedent for U.S. Government financial support for advertising (tourism and certain agricultural products) and that such advertising will be helpful in securing retailer support of the program.

Charlie Schultze argues that subsidized advertising is a questionable Government activity and sets a bad precedent for other industries that may seek similar assistance.

On balance, we do not think it would be good policy for the Administration to spend money for domestic advertising.

___ Approve advertising component of the program (Recommended by Commerce)

✓ Disapprove (Recommended by Charlie Schultze and us)

Presidential Announcement of the Program

Ambassador Strauss believes that you should not personally announce the program. He is skeptical about the viability of the program and thinks there is insufficient reason for you to undertake what he regards as risky personal exposure.

Under Secretary Harman believes it is important that you personally announce the program. He thinks that your personal involvement will increase the chances that the program will work, particularly in solidifying the moral obligation of the major retailers to increase their purchases from the affected shoe companies. We agree and would add the following points:

(1) your personal involvement will demonstrate your commitment to developing good trade adjustment assistance programs and enhance the Administration's credibility in this area generally;

(2) if the program works, you will have personally associated yourself with what will be a significant accomplishment for the Administration; and

(3) the industry and the unions support the program and would be appreciative of your personal involvement.

We recommend that you personally announce the program with a very brief statement at the White House; Under Secretary Harman would conduct the press briefing to follow.

____ Approve personal announcement

✓ Disapprove

THE WHITE HOUSE

WASHINGTON

Date: July 2, 1977

MEMORANDUM

FOR ACTION:

Eizenstat
Lipshutz no by phone
Moore NV

FOR INFORMATION:

Vice President
attached - Brzezinski

FROM: Rick Hutcheson, Staff Secretary

SUBJECT:

Watson/Harmon memo on Shoe Industry Revitalization Program

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 10 a.m.

DAY: Thursday

DATE: July 7

ACTION REQUESTED:

_X_ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

7/6

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

July 1, 1977

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson
Jane Frank

SUBJECT: SHOE INDUSTRY REVITALIZATION PROGRAM

We are transmitting a memorandum from Sidney Harman proposing a 3-year $60 million program on the captioned subject.

Sidney references the fact that the EPG has approved the general terms of the plan.

Other comments received are:

Strauss:

"...in my opinion, the plan has many imperfections, and I am frankly skeptical (but willing to be proved wrong) that there can be a major turnaround of this declining industry. But I think it is worth a try and I certainly don't have any better plan.

"...I do not concur with the proposal that the President personally announce the shoe program:
1. The plan is basically a business plan and will be viewed as such by Labor. A Presidential announcement of the plan could be adversely perceived as a "business only" orientation by the President.
2. There is a reasonable risk of failure of the program, in part due to industry skepticism and the general scope of the problem. There will also be Hill skepticism.
3. The President's decision on April 1 called for a thorough review of [Trade Adjustment Assistance] TAA as well as a shoe specific program. The overall TAA review is now nearly complete. Since it will include features supported by labor, business and communities, the President should reserve visibility for the overall review. How much Presidential visibility and in what form can await the final product of the review."

Schultze:

"I oppose government getting into the business of advertising footwear...it sets a bad precedent for other industries that might seek similar assistance when sales begin dropping off.

"I have reservations about the retailer program... to identify about 170 troubled shoe firms (out of a total of 380 firms) and to encourage the principal domestic shoe retailers to place or increase orders with those companies...(a) In many cases, domestic shoe lines compete most directly with other domestic shoe lines. This raises the possibility that some of the stronger firms --- many of which are also small, family-owned businesses --- would find themselves losing orders as a result of the government shoe program...(b) There are serious questions whether we should target the program at the bottom rather than the middle. Which group is more likely to survive in the long run?

"I realize that Harman considers the retailer effort as essential to his program, and therefore am not arguing to kill it. But because it has potential problems, I recommend that it not be featured as the first item in your announcement, as it is in Under Secretary Harman's memo. Instead, I would emphasize the technical assistance teams as the centerpiece of the program."

OMB:

"The...proposal is worth trying...[but its] effectiveness...should not be oversold...

"...we recommend that the technical assistance portion be highlighted in public statements.

"While the Commerce estimate of program cost ($60 million) is a reasonable order of magnitude, approval in principle...should not be taken as approval to seek a 1977 supplemental...or a 1978 budget amendment." "...it appears...Commerce will be able to absorb the 1977 and 1978 costs by reprogramming..."

Our Comments:

We underscore the unique circumstances of the shoe industry and urge all precautions to prevent this program from becoming a prototype for other ailing industries. We assume that consultations on the Hill have been extensive, but urge that Tip O'Neill and others from affected states and appropriate committees be fully informed in advance of any announcement. Even though little or no legislation is required, Congress may decide to hold oversight hearings on the plan.

ACTION

THE UNDER SECRETARY OF COMMERCE
Washington, D.C. 20230

1977 JUN 28 AM 9 35

MEMORANDUM FOR THE PRESIDENT

From: Sidney Harman

Subject: Shoe Industry Revitalization Program

In your April 1 decision on the shoe industry escape clause petition, you directed members of your Cabinet to conduct a thorough review of the Federal Government's trade adjustment assistance programs and to develop an assistance program tailored to the problems of the American shoe industry.

The Economic Policy Group's review of trade adjustment assistance will be complete in several weeks and we will be presenting our recommendations to you at that time together with draft legislation that may be required to implement the proposed changes.

The Department of Commerce, in consultation with the Department of Labor, the Special Trade Representative and other agencies, has developed a plan to assist the domestic shoe industry. The EPG has approved this plan for presentation to you. This recovery plan is responsive to your April 1 directive, that "over the long haul, the solution to difficulties in the shoe industry lies not in the restriction of imports but elsewhere -- in innovation and modernization of our own production facilities and the financing to make these possible".

Our proposed vitalization program would initiate a new role for the Federal Government: to serve as a temporary facilitator of industry reconstruction and growth. This approach requires a flexible program that is responsive to the unique character of each trade-impacted industry.

The bottom line in any adjustment assistance program depends on enabling firms to become competitive in the absence of border relief. We cannot guarantee that all firms in the shoe industry will achieve this

objective. Much will depend on the ability and initiative of individual firms to respond to the challenge of price competition through cost reducing innovations in production and marketing and through effective responses to trends in style and design. Nevertheless, we do believe that the proposed program for the shoe industry should improve the ability of firms in the industry to become effective.

Revitalization Program

Since every industry differs substantially in character from every other, a revitalization program must be responsive to the unique character of the affected industry. We judge the shoe industry to be capable of becoming more competitive. This can be accomplished through a three year Federal program, designed to vitalize the industry, make it self-sufficient and enable it to proceed thereafter without trade protection or other forms of Government assistance. The proposal includes:

1. Role of Retailers: To increase substantially the total shoes manufactured by trade impacted companies, we will encourage the principal domestic shoe retailers to increase domestic orders to these companies. In preliminary discussions with the Department of Commerce, the retailers have indicated their willingness to participate actively in such a program.

Retailers have told us that they will cooperate because they consider it in their self-interest to see a vigorous and growing domestic shoe manufacturing industry with the promise of quick turnaround time, easier financing compared to import operations, generally improved flexibility and the opportunity for more immediate response to the fashion-oriented segment of the consumer market. If the U.S. shoe industry is prosperous, of course, retailers believe orderly marketing agreements (OMA's) become unnecessary.

2. Impact on Manufacturers: To facilitate increased orders we will provide retailers with information on interested companies, such as major product lines, and size of orders that can be accommodated. As a consequence

of the increased volume created by the increased flow of orders to the affected companies, those companies should experience economies of production, sufficient to permit significant reductions in selling price which will make the affected firms more competitive with imports.

3. Custom Analysis of Company Problems: Approximately twenty specialist teams will be formed, drawn principally from the private sector. These teams will work with the affected shoe companies to develop and monitor three year plans, designed to improve their management technology, marketing or worker-management relations - or a combination of these components as indicated by the study of each firm.

4. Infusion of New Talent: Concentrated courses in management, production, supervision, design and marketing would be made available to current or prospective managers through Federal financial support. The specialist teams would assess the need for additional training in each firm and recruit managers for government sponsored programs. Existing legislation allows the Economic Development Administration (EDA) to sponsor specialized training programs.

5. Increased Promotion: An aggressive advertising program for footwear would be established in collaboration with an appropriate industry organization. The program would be built around a consumer information theme stressing the importance of quality, design and value in making buying decisions. This can be supported by EDA under existing legislation.

While some Federal agencies have expressed concern about the Federal Government funding such a program for an industry, there is precedent. Tourism, tobacco and cotton are examples of industries which have received effective Federal support for advertising programs. We believe an advertising program is a necessary component in the overall plan to revitalize the industry.

6. Expanded Capital Investment: The Federal Government would make available $20-25 million in loans and loan guarantees to increase capital investment in the affected companies.

7. Acquisitions and Mergers: Subject to antitrust limitations, the Federal Government would facilitate sale of some affected companies to new owners or encourage mergers where appropriate through financial assistance in the form of loans and loan guarantees for capital investment totalling approximately $15-20 million. Existing legislation also allows EDA to provide financing if an acquisition or merger is part of a recovery plan. In many cases, however, the specialist teams could recommend and facilitate acquisitions without Federal financial cost.

Costs

The total cost for the three year program would be approximately $60 million. The assistance would be delivered primarily through existing trade adjustment mechanisms. Since approximately $40 million of the Federal expenditure is in the form of loans and loan guarantees, a substantial portion of Federal costs should be recovered.

Benefits

The customized program of assistance to the shoe industry will provide advantages for business, labor, consumers and taxpayers:

- No new legislation is required to implement this recovery plan.
- It should increase shoe industry employment.
- The industry will utilize existing excess manufacturing capacity.
- The program should have no appreciable affect on the consumer cost of shoes.
- The plan is a temporary mechanism designed to vitalize the industry, make it self-sufficient and permit it to operate thereafter without trade protection or additional

government assistance. It is strictly a temporary program which does the job and gets out.

It is impossible to predict precisely how effective the program will be. Its success will, of course, depend on the fulfillment of retailers' pledges to significantly increase orders to affected manufacturers. The ability and readiness of the individual manufacturing firms to participate in and respond to the team recommendations will also affect its success.

To the extent it is successful, however, the plan may provide a model for a system in which mutual cooperation and support are developed among private business, labor and government in the service of the industry, the community and the employees.

You may wish to announce the shoe vitalization program at a news conference around June 30. This would fulfill your commitment to develop such a program for the industry within ninety days of your April 1 decision on the footwear escape clause case.

If you approve this proposal, I further recommend that you hold the press conference with representatives of the shoe industry present.

____ Approve ____ Disapprove

4319

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

July 7, 1977

MEMORANDUM FOR: RICK HUTCHESON

FROM: CHRISTINE DODSON

SUBJECT: Watson Memo on Shoe Industry Revitalization Program

We received an information copy of Jack Watson's memo to the President transmitting a paper by Sidney Harmon proposing a $60 million program to help the domestic shoe industry. Although the NSC staff participated in the EPG discussion of this issue, we would like to submit the following additional comments:

1. We agree that this program, while not perfect, merits a try. It is consistent with the President's expressed desire for an assistance program tailored to meet the needs of the shoe industry. But, we share Bob Strauss's skepticism about the long term prospects for this declining industry.

2. The announcement of the program should focus on the technical and financial assistance aspects of the program, specifically items 3, 6 and 7 in the Harmon memo. We would downplay any references: to: (a) the reported commitments by retailers to increase purchases of shoes and (b) government promotional efforts. Rather, we should emphasize what we are doing to ease the burden of adjustment to import competition. The USG should not actively engage in a "Buy America" campaign for shoes when trade protectionism is on the rise in Europe and elsewhere.

3. The President should not, as suggested in the Harmon memo, announce this program personally. We agree with Bob Strauss that the President should await completion of the broader review of our trade adjustment assistance programs and then decide whether to associate himself publicly with the interagency findings and recommendations.

THE WHITE HOUSE

WASHINGTON

July 1, 1977

Hamilton Jordan
Z. Brzezinski

Re: The Panama Canal

The attached was returned in the President's outbox and is forwarded to you for your information.

Rick Hutcheson

cc: Frank Moore

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

June 15, 1977

To Ham. Prepare To 3:15. Congenial answers. These papers are the arguments we must prepare to answer - J.C.

THE PRESIDENT HAS SEEN.

The President
The White House
Washington D. C.

Dear Mr. President:

We are enclosing a most important letter from four former Chiefs of Naval Operations who give their combined judgement on the strategic value of the Panama Canal to the United States.

We think you will agree that these four men are among the greatest living naval strategists today, both in terms of experience and judgement. Their letter concludes:

"It is our considered individual and combined judgement that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty."

We concur in their judgement and trust you will find such action wholly consistent with our national interest and will act accordingly.

Sincerely,

Strom Thurmond
Strom Thurmond USS

John L. McClellan
John L. McClellan USS

Jesse Helms
Jesse Helms USS

Harry F. Byrd, Jr.
Harry F. Byrd, Jr. USS

June 8, 1977

The President
The White House
Washington, D. C.

Dear Mr. President:

As former Chiefs of Naval Operations, fleet commanders and Naval Advisers to previous Presidents, we believe we have an obligation to you and the nation to offer our combined judgment on the strategic value of the Panama Canal to the United States.

Contrary to what we read about the declining strategic and economic value of the Canal, the truth is that this inter-oceanic waterway is as important, if not more so, to the United States than ever. The Panama Canal enables the United States to transfer its naval forces and commercial units from ocean to ocean as the need arises. This capability is increasingly important now in view of the reduced size of the U.S. Atlantic and Pacific fleets.

We recognize that the Navy's largest aircraft carriers and some of the world's super-tankers are too wide to transit the Canal as it exists today. The super-tankers represent but a small percentage of the world's commercial fleets. From a strategic viewpoint, the Navy's largest carriers can be wisely positioned as pressures and tensions build in any kind of a short-range, limited situation. Meanwhile, the hundreds of combatants, from submarines to cruisers, can be funneled through the transit as can the vital fleet train needed to sustain the combatants. In the years ahead as carriers become smaller or as the Canal is modernized, this problem will no longer exist.

Our experience has been that as each crisis developed during our active service--World War II, Korea, Vietnam and the Cuban missile crisis--the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistic support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict.

As long as most of the world's combatant and commercial tonnage can transit through the Canal, it offers inestimable strategic advantages to the United States, giving us maximum strength at minimum cost. Moreover, sovereignty and jurisdiction over the Canal Zone and Canal offer the opportunity to use the waterway or to deny its use to others in wartime. This authority was especially helpful during World War II and also Vietnam. Under the control of a potential adversary, the Panama Canal would become an immediate crucial problem and prove a serious weakness in the over-all U.S. defense capability, with enormous potential consequences for evil.

Mr. President, you have become our leader at a time when the adequacy of our naval capabilities is being seriously challenged. The existing maritime threat to us is compounded by the possibility that the Canal under Panamanian sovereignty could be neutralized or lost, depending on that government's relationship with other nations. We note that the present Panamanian government has close ties with the present Cuban government which in turn is closely tied to the Soviet Union. Loss of the Panama Canal, which would be a serious set-back in war, would contribute to the encirclement of the U.S. by hostile naval forces, and threaten our ability to survive.

For meeting the current situation, you have the well-known precedent of former distinguished Secretary of State (later Chief Justice) Charles Evans Hughes, who, when faced with a comparable situation in 1923, declared to the Panamanian government that it was an "absolute futility" for it "to expect an American administration, no matter what it was, any President or any Secretary of State, ever to surrender any part of (the) rights which the United States had acquired under the Treaty of 1903," (Ho. Doc. No. 474, 89th Congress, p. 154).

We recognize that a certain amount of social unrest is generated by the contrast in living standards between Zonians and Panamanians living nearby. Bilateral programs are recommended to upgrade Panamanian boundary areas. Canal modernization, once U.S. sovereignty is guaranteed, might benefit the entire Panamanian economy, and especially those areas near the U. S. Zone.

The Panama Canal represents a vital portion of our U.S. naval and maritime assets, all of which are absolutely essential for free world security. It is our considered individual and combined judgment that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty.

Very respectfully,

Robt B. Carney
ROBERT B. CARNEY

Arleigh Burke
ARLEIGH A. BURKE

George W. Anderson
GEORGE ANDERSON

Thomas H. Moorer
THOMAS H. MOORER

PANAMA CANAL NEGOTIATIONS

There are three fundamental questions involved in the Panama Canal negotiations.

1. Justice: Do we hold the Canal Zone by right? The answer is yes.

2. Practicality: Will a treaty abrogating sovereignty enable us to maintain the neutrality of the Canal for all nations? The answer is no.

3. Policy: Is it good policy to stay in the Isthmus in the face of Panamanian discontent and agitation? The answer is that it is the only viable choice we have and one that can form the basis for a fruitful, creative relationship with the whole of Latin America.

* * *

1. The question of justice.

a) We hold our sovereign rights in the Canal Zone by both grant and purchase; we hold deed and title to property purchased from private owners.
b) The original bargain with Panama was a just bargain which guaranteed Panama's independence and economic self-sufficiency.
c) Contrary to the myth of guilt, we did not obtain our rights by shameful maneuvers.
d) We have practiced strict neutrality towards Panama's affairs.
e) Our benefits towards Panama have constantly increased both in our treatment of Panamanian employees, indirect benefits to the Panamanian economy, and direct military and economic assistance.
f) We have constantly adjusted differences in our relations amicably and generously in subsequent treaties, always retaining our own sovereign rights and respecting the sovereign rights of Panama.
g) We have fulfilled our international treaty obligations well, and have operated the Canal for the benefit of all nations.

2. The question of practicality: alternative scenarios.

Scenario I: If a treaty is denied

a) riots
b) strikes
c) sabotage
d) closure or failure of Canal operations
e) economic collapse in Panama
f) radicalization of Panamanian politics
g) exit of U.S.

Scenario II: If a treaty abrogating sovereignty is signed and ratified

a) attempts by Panama to assert its sovereignty and independence
b) magnification of operating frictions and disagreements
c) harassment of U.S employees
d) exit of most U.S. employees, ending practical control by U.S.
e) rivalry of Panamanian politicians to control Canal operations, payrolls, and revenues
f) radicalization of Panamanian politics to seek popular support for control of Canal
g) demands for speed-up of timetable for U.S withdrawal
h) increasing influence of socialist bloc "technicians and advisors" to replace vanishing U.S. person nel
i) coups by local colonels seeking to reform corruption and to establish their own Swiss bank accounts
j) rise of terrorist guerrilla "liberation" movement, eventually supported by Cuban troops.
k) coup by Marxist guerilla leader
l) Treaty of Friendship and Cooperation with the Soviet Union
m) Soviet naval bases in Colon and Balboa, on Atlantic and Pacific

3. The question of policy: a constructive alternative

a) Retain U.S. sovereignty in the Canal Zone
b) Demonstrate firm leadership to Panama and Latin America by retaining our presence and stability in the Isthmus
c) Proffer the hand of friendship to Panama by making firm commitments (which we always eluded in the past) to
--major modernization of the Canal, structured to spread social and economic benefits throughout all Panamanian social classes
--assistance in broad development even after modernization is completed
--re-establishment of prudent democratic institutions in Panama
d) Place Panama in the framework of free enterprise and progress by setting up an anti-Marxist entente in the Western Hemisphere
e) Give economic and moral support to those governments of Latin American which have thrown off Marxism and are seeking to eliminate the terrorism which destroys the human rights of their citizens.

1. The outlook in the Senate for any Panama Treaty that abrogates U.S. sovereignty rights in the Canal Zone is poor. Not only are the votes lacking, but also the Senate calendar is too crowded to permit a measure so controversial to receive proper hearings and debate in the short confines of the September session.

2. The outlook in the House is equally bleak, even though a simple majority is all that is necessary. The House has, on numerous occasions, produced majorities opposed to the surrender of sovereignty. Article IV, Paragraph 3 of the Constitution gives "Congress"--i.e., both Houses--authority to dispose of U.S. territory and property. Sovereignty is a property right. Note: The House must vote before a treaty is ratified.

3. The most recent poll by Opinion Research, Inc., Princeton, N.J., shows 78% of the American people opposed to the surrender of ownership and control of the Panama Canal. This is the third year the question has been asked and shows a continuously rising sentiment (66% in 1975).

4. Torrijos has not been making the approval of a treaty any easier. His close relationship with Fidel Castro, and especially with Qaddafi of Libya--bankroller and protector of the anti-Zionist terrorists--will produce acrimonious debates that will divide the nation.

5. The negotiation of the treaty by Sol Linowitz, an international banker with emotional commitments to the Latin American Marxists--such as the late Salvador Allende--will make the product of the negotiations suspect, as not objectively protecting traditional United States interests and goals.

6. The exorbitant monetary demands of the Panamanians will make it even more difficult to sell the treaty to Americans, even if concessions are made, in our present state of fiscal crisis.

7. The solution is a basic compromise on the fundamental terms of the treaty: If the U.S. retains its sovereign rights, then we will make a binding commitment to initiate a major modernization of the Panama Canal according to the so-called "Terminal Lake-Third Locks Plan." (see attached memo) This would cost about $1.5 billion (as opposed to $6-10 billion for a sea-level canal). If the plan were properly implemented it would:

   a) provide for maximum Panamanian participation in the Plan
   b) upgrade technical skills and experience throughout all levels of Panamanian society
   c) reconstitute social and urban planning and development in Panama
   d) create the economic and social infrastructure that would allow Panama to continue development after construction of TLTL.
   e) become a real partnership into which Panamanians could divert nationalist energy and pride.

If the President proposes this plan, the U.S. will retain sovereignty, Torrijos and the Panamanian people will receive real economic and social benefits, and the President will have a proposal that will sail through Congress with the full support and cooperation of conservatives and liberals alike.

For the President, the impasse over the Canal will be broken with a constructive compromise proposal.

TERMINAL LAKE-THIRD LOCKS PLAN FOR PANAMA CANAL

1. This plan provides for completing the major modernization of the Panama Canal authorized in 1939 and suspended in 1942 under the Terminal Lake - Third Locks Plan, which was developed in the Panama Canal organization as the result of experience in World War II and won approval by the President as a post-war project.

2. Briefly stated, this plan calls for the consolidation of all Pacific Locks in three lifts near Agua Dulce to match the layout and capacity of the Atlantic Locks, creation of a summit level terminal lake at the Pacific end of the Canal, and raising the maximum summit level from 87 feet to its optimum height.

3. One set of the new Pacific Locks would be the same size as the new set at Gatun. (1200' x 140' x 45' deep--present locks are 1000' x 110' x 40')

4. More than $76,000,000 was expended on the Third Locks Project, including huge lock site excavations at Gatun and Miraflores and other works, most of which are useful. In addition, some $95,000,000 was expended on enlargement of Gaillard Cut completed on August 15, 1970, making a total of more than $171,000,000 already expended toward the Canal's major modernization.

5. In addition, the Terminal Lake Plan enables the maximum utilization of all work so far accomplished and can be constructed under existing treaty provisions, a paramount consideration.

6. Informal estimates for the Terminal Lake Plan are:

Cost	$1.5 billion
Preparation	2 years
Construction	5 years (1200 working days)

7. The plan preserves the fresh water barrier between the oceans, protects marine life in the two oceans, has the support of major environmental groups, and safeguards the economy of Panama.

8. The Sea Level proposal, <u>initially</u> estimated in 1970 at $2.88 billion, would require a new treaty with Panama, involving a huge indemnity and the cost of a right of way, both of which would have to be added to initial estimate, probably totalling $6 billion to $10 billion and requiring 14 years to construct.

9. The sea level proposal by requiring construction of a salt water channel between the ocean would enable the migration of alien predators and destructive species between the oceans, is ecologically dangerous, is strongly opposed by most biological groups at home and abroad, and would dislocate the economy of Panama.

10. When the canal problem is evaluated from all its angles, the Terminal Lake proposal offers the best, the most economical and sensible solution.

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

July 1, 1977

Hamilton Jordan
Fran Voorde

The attached was returned in the President's outbox. It is forwarded to you for your information.

Rick Hutcheson

Re: Proposed Southern Trip
July 20-21

cc Tim Kraft

THE WHITE HOUSE

WASHINGTON

confidential

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
	X	JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		GAMMILL
		HARDEN
		HOYT
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LANCE
		LINDER
		MITCHELL
		POSTON
		PRESS
		B. RAINWATER
		SCHLESINGER
		SCHNEIDERS
		SCHULTZE
		SIEGEL
		SMITH
		STRAUSS
		WELLS
	X	VOORDE

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

June 29, 1977

Tim
a) Why Miss.?
b) No substance or reason 1st day. Assess things like o.l visit in Gulf - disast handling, etc.
c) Time schedule
d) Check w J. Kreps Carolina coast visit

MEMORANDUM FOR THE PRESIDENT

FROM: TIM KRAFT TK

SUBJECT: Proposed Southern Trip - July 20 - 21 J

In an earlier memo to you regarding possible travel in July, you wrote "a possibility -- hold open and assess a full day's trip" on the 15-state Southern Legislative Conference to be held in Charleston.

Attached is a schedule proposal for a two-state trip.

Tim Smith, Fran and I have met with Hamilton, Jody, and Frank and the consensus recommendation is to add Mississippi to the South Carolina stop. Tennessee was considered a higher priority but the Vice President will be there at a Jefferson-Jackson Day Dinner nine days before our travel date.

Jody strongly recommends, and we concur, that the trip be scheduled over a two-day period. Not two whole days, just one twenty-four hour period which affords far better national press coverage than one day, however good the event. Fresno, for example, and the farm trip got scant national coverage because of the earlier events of the same day.

THE WHITE HOUSE

WASHINGTON

PROPOSED SOUTHERN TRIP

Wednesday, July 20, 1977

4:00 p.m. EDT	Washington, D.C.	Depart Andrews Air Force Base for Jackson, Miss. (Flight time: 2:10)
5:10 p.m. CDT	JACKSON, MS.	Arrive Jackson Thompson Field - OPEN ARRIVAL VIP Political Reception Committee
5:30 p.m.		Depart Airport for Small Town Southern Barbeque Cook-out
6:00 p.m.	Small Town (approx 20-25 miles from Jackson)	Community Barbeque -- Mingle - Shake Hands
6:40 p.m.		Informal Remarks
7:00 p.m.		Depart barbeque for Jackson
7:30 p.m.		RON - Jackson Private Home

Thursday, July 21, 1977

9:00 a.m. CDT	Jackson, MS.	Depart Jackson for Charleston, So. Carolina (Flight time: 1:25)
11:25 a.m. EDT	CHARLESTON, S.C.	Arrive Charleston Municipal Airport - Open Arrival VIP Reception Committee
11:45 a.m.		Depart Charleston Airport for Mills Hyatt House
12:15 p.m.		Arrive Mills Hyatt House Holding Room Press sets up
12:30 p.m.		Address - Southern Legislative Conference

Thursday, July 21, 1977, cont'd

1:00 p.m.		Private Lunch - Holding Room - Press Files
2:00 p.m.		Depart Mills Hyatt House for Airport
2:30 p.m.		Depart Charleston for Washington, D.C. (Flight time: 1:15)
3:45 p.m. EDT	Washington, D.C.	Arrive Andrews Air Force Base
4:05 p.m.		Arrive The White House

# # # #

In Mississippi, there is ample time to consider one or both of the following additional events:

1) A private, informal meeting with Governor Finch (breakfast or coffee in the evening) --- Governor Finch may wish to invite Governor Wallace to join in this informal session.

2) An informal 45-60 minute Q & A with the news reporters of several Southern States --- again either in the evening or at breakfast.

THE WHITE HOUSE
WASHINGTON

July 1, 1977

Midge Costanza -

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

Re: Women's Year Conference

THE WHITE HOUSE
WASHINGTON

6-30-77

To Midge

How soon can we appropriately terminate the Women's Year conferences?

J.

THE WHITE HOUSE
WASHINGTON

July 1, 1977

Jack Watson -

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

Re: Handling Emergencies

THE WHITE HOUSE
WASHINGTON

6-30-77

To

Jack Watson

We need a way
to handle emergencies
a la Lloyd Hall's
in Georgia when I
was Governor.

Check with Frank
& make recommendation.

J. C.

THE WHITE HOUSE

WASHINGTON

Date: June 30, 1977

MEMORANDUM

FOR ACTION:

Jack Watson
Landon Butler attached

FOR INFORMATION:

The Vice President concur.
Bob Lipshutz
Frank Moore
Bert Lance
Charles Schultze — attached

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Eizenstat's memo 6/30/77 re Labor Law Reform

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME:

DAY: IMMEDIATE TURNAROUND

DATE:

ACTION REQUESTED:

__X__ **Your comments**

Other:

STAFF RESPONSE:

____ **I concur.** ____ **No comment.**

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

June 30, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu

SUBJECT: Labor Law Reform

BACKGROUND

The AFL-CIO and the U.A.W. have declared that labor law reform is this year's top legislative priority. The unions feel that the 1974 Taft-Hartley Act, and particularly its rules governing union organizing efforts, unfairly favors management.

A bill, H.R. 77, embodying some of the union-backed reforms was introduced by Congressman Thompson in January. During the spring the AFL-CIO drafted a much more extensive bill. After several rounds for consultation with the Labor Department the AFL-CIO agreed to a much more modest set of reforms outlined below.

Three highly controversial proposals were deleted during this round of consultations - a provision to repeal 14B, a provision that would have allowed certification of a union as a bargaining agent without an election in some cases, and a provision that would have required employers taking over a business to honor the old union contract. The AFL-CIO accepted these major compromises, along with a number of lesser ones, because they very much want Administration backing for their bill. Without our active support it is doubtful that any labor law reform bill can pass Congress. Even if the unions do not receive our support, however, they expect to introduce and push this package of reforms very soon. They have asked for a decision on these reforms by July 7.

ANALYSIS

The effect of this set of proposals is generally to streamline the labor laws and to make it easier for unions to organize. Under current law, companies can often use procedural delays to weaken union organizing efforts. The law's remedies are so weak that in some cases outright flaunting of the law is

less costly than collective bargaining and the subsequent wage settlements. The package focuses on procedural changes and speed-ups, strengthened sanctions against employers guilty of unfair labor practices, and coverage expansions.

The business community argues that the changes will tip the current balance in labor-management relations too much toward labor. I disagree. I have met on three occasions with leaders from the Business Roundtable - Chamber of Commerce - National Association of Manufacturers to specifically discuss labor law reform. While, of course, they would prefer to see no change in the labor laws, many of their specific criticisms have been dealt with in our revisions.

A coalition of business groups intends not only to lobby against these proposals, but to introduce their own amendments to the labor laws, presumably ones intended to favor employers. It is likely that this issue will develop into a tough battle in Congress, with final passage delayed until next year, if at all.

Because labor law reform is such a high priority with organized labor, we and the Labor Department have cooperated closely with the unions in the development of this package. At the same time the Labor Department has tried to limit the proposals to measures that remedy actual inequities in the law, as opposed to simply shifting its balance toward labor.

Prior to submitting these proposals from the Labor Department to you I have circulated them to the Departments of Commerce, Justice and Treasury, and to CEA, OMB and the Vice President. Their comments are attached, and the analysis below reflects their concerns.

OPTIONS

I believe that there are three possible strategies:

1) Neutrality We could take a hands off attitude on the grounds that it is not worth investing our political capital in this potentially bloody battle. The unions would consider this tantamount to opposition.

2) A Labor Law Reform Message As in our airline message, we could endorse the concepts and principles of labor law reform without detailing them or preparing legislative language.

less costly than collective bargaining and the subsequent wage settlements. The package focuses on procedural chang and speed-ups, strengthened sanctions against employers gu of unfair labor practices, and coverage expansions.

The business community argues that the changes will tip the current balance in labor-management relations too much toward labor. I disagree. I have met on three occasions wi leaders from the Business Roundtable - Chamber of Commerce - National Association of Manufacturers to specifically discus labor law reform. While, of course, they would prefer to se no change in the labor laws, many of their specific criticism have been dealt with in our revisions.

A coalition of business groups intends not only to lobby against these proposals, but to introduce their own amendments to the labor laws, presumably ones intended to favor employers It is likely that this issue will develop into a tough battle in Congress, with final passage delayed until next year, if at all.

Because labor law reform is such a high priority with organized labor, we and the Labor Department have cooperated closely with the unions in the development of this package. At the same time the Labor Department has tried to limit the proposals to measures that remedy actual inequities in the law, as opposed to simply shifting its balance toward labor.

Prior to submitting these proposals from the Labor Department to you I have circulated them to the Departments of Commerce, Justice and Treasury, and to CEA, OMB and the Vice President. Their comments are attached, and the analysis below reflects their concerns.

OPTIONS

I believe that there are three possible strategies:

1) Neutrality We could take a hands off attitude on the grounds that it is not worth investing our political capital in this potentially bloody battle. The unions would consider this tantamount to opposition.

2) A Labor Law Reform Message As in our airline message, we could endorse the concepts and principles of labor law reform without detailing them or preparing legislative language.

3) A Message Together with an Administration Bill The Vice President, Ray Marshall and I support this course. If we adopt this course we should be able to extract a much greater measure of cooperation from the AFL-CIO over the course of the next year.

It is unlikely that the AFL-CIO will accept a severely pared down Administration bill, since they have conceded so much already in their negotiations with the Labor Department. Therefore, if you cannot support most of this package, the message or neutrality strategy is probably preferable. If you agree with most of these reforms, however, then an Administration bill is the option with the most political benefit

It is difficult to overestimate the importance of this matter in terms of our future relationship with organized labor. Because of budget constraints and fiscal considerations, we will be unable to satisfy their desires in many areas requiring expenditure of government funds. This is an issue without adverse budget considerations, which the unions very much want. I think it can help cement our relations for a good while.

Following are the "bare bones" provisions now remaining in the Labor Department's package of amendments to the National Labor Relations Act (NLRA). Secretary Marshall strongly recommends all of these remaining proposals.

PROPOSED REFORMS

Not all agencies commented on each of the reforms. All specific comments of the agencies surveyed are reflected. The Vice President, the Secretary of the Treasury and the Attorney General expressed non-specific approval of the whole package.

I. Expedited Procedures

A. Board Membership

The number of board members would be increased from five to seven (budget costs $2 million). This should enable the board to better handle its growing back log of cases along with the substantial additional powers proposed in these reforms. Since the Board divides its work among small panels of its members, more members would allow more panels to operate. The American Bar Association has recommended an increase to 9 members.

OMB opposes this increase on the grounds that the Board may be able to increase its productivity with better utilization of existing resources.

Commerce and CEA do not oppose this change. DOL supports it.

I believe that the Board should be increased to 7 members.

Yes_____ No_____ Comment_____

B. Summary Affirmance of Administrative Law Judge Decisions

The decrees of the Administrative Law Judges (ALJs) would be affirmed in simpler cases by 2-member panels of the Board, rather than by the current three-member panels. Currently, the 94 ALJs across the country make all initial decisions regarding complaints of unfair labor practices. These decisions are in the form of recommendations to the Board in Washington, and do not become final until the Board acts on them. The Board takes an average of 120 days to review these decisions, resolving about 25% in less than 109 days, but taking more than 221 days to decide on the most complex 25%. About 2/5 of all ALJ decisions are totally or partially reversed by the Board. By allowing the Board to delegate its decision making authority to a greater degree, this reform aims at speeding up the review process. This

procedure is consistent with those used by the Courts of Appeal in their summary affirmance procedure. The NLRB could determine which more complex cases would be heard by the full Board.

OMB does not support this change on the grounds that it would have little substantial impact. They prefer the procedure of allowing the ALJ's ruling to become final unless the Board grants review. This procedure was embodied in the H.R. 77 but was modified by the Labor Department in the current plan because of the high rate of reversals of ALJ decisions by the Board. The business community strongly objected to delegating as much authority to the ALJs as OMB proposes. Thus the proposal as it is, is a more moderate approach than reflected in H.R. 77.

CEA and Commerce haveno objection to the 2-member panel affirmation. DOL supports this change.

I support the 2-member panel approach.

Yes_____ No_____ Comment_____

C. Elections

1) Time Limits

The Labor Department and our staff succeeded in moving the AFL-CIO off of its original position that no election would be necessary, upon a showing of certain evidence that a majority of workers wished to join a union.

As the provision now reads, in cases in which a majority of employees in an appropriate unit have signed authorization cards, an election would be required within 15 days of the filing of a petition with the Board (25 days for units larger than 250 employees.) All other elections would be required within 45 days, except for those of "exceptional novelty or complexity" which would have to be held within 75 days. In complex cases in which the Board could not resolve the issues by the time of the election, the election would be held anyway. If the subsequent decision changed the unit or eligibility rules under which the election was held a new election would be called.

Currently the median time for holding an uncontested election is 56 days, while the median for contested elections in which the issues are resolved at the regional level is 75 days. These two kinds of cases comprise 99% of all elections. For the 1% of cases in which the issues must be resolved by the Board, the median time before an election is 275 days.

The Labor Department argues that delay almost always works in favor of an employer resisting unionization. They believe that under current law employers can unfairly delay elections by contesting such things as the appropriateness of the unit or the eligibility of certain employees to vote in the election. Time limits would eliminate the incentive to frivolously contest elections.

The Chairman of the NLRB has indicated that the proposed time limits are feasible.

CEA, OMB and Commerce all feel that the time limits may be too inflexible. They propose targets rather than limits.

I recommend that some specific time limits be adopted. To satisfy concerns that the limits are too restrictive we could consider a modest lengthening of the periods. But the principle that an election should be held after a fixed time is important since I support its inclusion in this legislation.

Yes_____ No_____ Comment_____

2) Unit Determination by Rule-Making

The legislation would instruct the Board to promulgate rules governing appropriate units for collective bargaining and for eligibility to vote in union elections.

Currently the Board resolves most of these issues on a case-by-case basis. Greater codification of the rules could cut down on delay and reduce the uncertainties in the law. This would be consistent with the changes other agencies have been encouraged to adopt, moving from time-consuming, case-by-case adjudicative decision-making to more clearly defined and speedier rule-making.

OMB does not support this change because they believe that everything that could be covered by a rule in this area is already covered by an NLRB precedent. The Department of Labor feels, however, the NLRB precedents are inconsistently applied, and that rules would insure fairer and faster application of Board policies. Commerce supports rulemaking, but believes that it should not be tied to time limits for elections. (Commerce's concern has been dealt with in the most recent draft).

I support this rulemaking procedure.

Yes_____ No_____ Comment_____

3) Equal Opportunity to Address Employees

The Board would be instructed to issue regulations requiring that employers and employees have "equal assured opportunity" to address all employees during a union's organizing efforts. Depending on how the Board write these regulations, this could grant unions, in some cases, rights to go on company property to make their case.

Currently, unions seeking to address employees are generally limited to calling or visiting them in their homes, or to distributing literature outside plant gates. Employers have much greater access to employees, since they can make their case on company time and company property.

The AFL-CIO had proposed that the legislation itself grant equal rights of access to unions. Our procedure will give the Board the power to define the appropriate rules to govern union rights.

OMB supports this change in principle, but warns of definitional and enforcement problems with an "equal" standard. Schultze agrees with the principle but suggests "full opportunity" rather than "equal". It should be noted that in cases in which an employer chooses not to make any case to his employees prior to a union election, a "full" standard might entail broader union rights than "equal".

Commerce supports this change in principle, but believes that it is very important to maintain private property rights. They urge that any legislative instruction to the Board specifically mention these property rights. The Department of Labor feels that the issue is not one of property rights versus union rights. They point out that under an "equal opportunity" standard that an employer could not be required to grant access to unions unless he used company time or property to argue against unionization. The controlling factor would be a decision by the employer.

This will be one of the most controversial aspects of this package. Unions should have a fair chance to make their case, but employers obviously also have rights to control their operations and to limit access to their facilities. Therefore we recommend that the Board be instructed to promulgate rules granting unions "equal assured opportunity to address employees prior to an election consistent with the employer's right to the reasonably unimpeded operation of his business." Our latest conversations with the AFL-CIO indicate that they would be willing to accept such a modification.

Yes_____ No_____ Comment_____

II. Strengthened Remedies Against Unfair Employer Labor Practices

A. Participation in Federal Contracts

Employers guilty of willfully violating a Board order enforced by a court decree would be debarred from participating in new federal contracts for three years. The Secretary of Labor could exempt a company from this penalty if he found it was in the national interest, or if the company was the sole source of a needed product. This remedy would apply only to cases involving coercion of employees or discrimination based on union membership. Currently there is no such provision in the law.

OMB supports this provision but argues that similar sanctions (i.e., large fines) should also apply to firms without federal contracts and to unions guilty of unfair labor practices. The Department of Labor argues that fines for other violators are inconsistent with the intent of this provision, which is simply to insure that federal dollars do not go to those who willfully

OMB does not support this change because they believe that everything that could be covered by a rule in this area is already covered by an NLRB precedent. The Department of Labor feels, however, the NLRB precedents are inconsistently applied, and that rules would insure fairer and faster application of Board policies. Commerce supports rulemaking, but believes that it should not be tied to time limits for elections. (Commerce's concern has been dealt with in the most recent draft).

I support this rulemaking procedure.

Yes_____ No_____ Comment_____

3) Equal Opportunity to Address Employees

The Board would be instructed to issue regulations requiring that employers and employees have "equal assured opportunity" to address all employees during a union's organizing efforts. Depending on how the Board write these regulations, this could grant unions, in some cases, rights to go on company property to make their case.

Currently, unions seeking to address employees are generally limited to calling or visiting them in their homes, or to distributing literature outside plant gates. Employers have much greater access to employees, since they can make their case on company time and company property.

The AFL-CIO had proposed that the legislation itself grant equal rights of access to unions. Our procedure will give the Board the power to define the appropriate rules to govern union rights.

OMB supports this change in principle, but warns of definitional and enforcement problems with an "equal" standard. Schultze agrees with the principle but suggests "full opportunity" rather than "equal". It should be noted that in cases in which an employer chooses not to make any case to his employees prior to a union election, a "full" standard might entail broader union rights than "equal".

Commerce supports this change in principle, but believes that it is very important to maintain private property rights. They urge that any legislative instruction to the Board specifically mention these property rights. The Department of Labor feels that the issue is not one of property rights versus union rights. They point out that under an "equal opportunity" standard that an employer could not be required to grant access to unions unless he used company time or property to argue against unionization. The controlling factor would be a decision by the employer.

This will be one of the most controversial aspects of this package. Unions should have a fair chance to make their case, but employers obviously also have rights to control their operations and to limit access to their facilities. Therefore we recommend that the Board be instructed to promulgate rules granting unions "equal assured opportunity to address employees prior to an election consistent with the employer's right to the reasonably unimpeded operation of his business." Our latest conversations with the AFL-CIO indicate that they would be willing to accept such a modification.

Yes_____ No_____ Comment_____

II. Strengthened Remedies Against Unfair Employer Labor Practices

A. Participation in Federal Contracts

Employers guilty of willfully violating a Board order enforced by a court decree would be debarred from participating in new federal contracts for three years. The Secretary of Labor could exempt a company from this penalty if he found it was in the national interest, or if the company was the sole source of a needed product. This remedy would apply only to cases involving coercion of employees or discrimination based on union membership. Currently there is no such provision in the law.

OMB supports this provision but argues that similar sanctions (i.e., large fines) should also apply to firms without federal contracts and to unions guilty of unfair labor practices. The Department of Labor argues that fines for other violators are inconsistent with the intent of this provision, which is simply to insure that federal dollars do not go to those who willfully

violate the nations laws. They point out that this sanction is used to enforce other federal laws (such as Davis-Bacon, Service Contracts, OFCC, etc.).

Commerce finds an automatic 3 year debarment objectionable. They would prefer to see all firms subject to penalties, and they believe that debarment should be lifted when a firm comes into compliance.

The Department of Labor argues that lifting the sanctions when a firm comes into compliance would allow a firm to circumvent the law. For example, a firm could fire workers for union activities and then later, when the NLRB threatened to cut off federal contracts, it could simply rehire them. The damage would already have been done however.

I agree with the Department of Labor that a 3 year debarment should be written into the law. If this period (which is standard in other debarment laws) is considered to long we could agree to compromise on a somewhat shorter period.

Yes_____ No_____ Comment_____

B. Double Back Pay

Employees unlawfully discharged for union activity during the initial organizing period would be entitled to reinstatement and double back pay. This would not apply to any subsequent period.

Currently the Board has the authority to require reinstatement and back pay awards, but this award is based on back pay less the employee's interim earnings (the "mitigation of damage" rule). The result is lengthy proceedings to determine the amount of damages and enterim earnings and an incentive for companies to contest and minimize these awards. Typically these back pay awards are quite small and are often delayed for years.

Double back pay computed without offsetting factors would greatly simplify and streamline this procedure.

OMB does not object to this change, if analysis supports this estimate of damages to the employee.

Commerce has no comment.

I support this change.

Yes_____ No_____ Comment_____

C. Remedies for Refusal to Bargain for First Contract

The NLRA would be amended to authorize the Board to require companies found guilty of refusing to bargain in good faith for a first contract to recompense employees for the presumed loss of benefits during the unfair delay. This compensation would be the difference between the wages and fringes received by the employees during the delay and these benefits multiplied by the average percentage increase in all labor contract settlements signed during the delay, as measured by a standard BLS index. For example, if first contract settlements had averaged 8% in the period of delay, then the employer could be required to pay his employees a bonus of 8% of the pay they earned during the delay.

Currently employers in some cases simply refuse to bargain after the union wins an election, and then litigate the subsequent "order to bargain" issued by the Board. They prefer the legal costs to the higher settlements that might result from a collective bargaining agreement. This provision takes away this incentive to delay by litigation.

OMB has no objection in principle but wants to further analyze the choice of index and how it would be used. Commerce believes that the remedy gives the Board too much authority to determine wage rates. In practice the distinction between a rigid but legal bargaining stance and an illegal pattern of refusing to bargain is based partly on the Board's judgment. Commerce questions whether the government should be so deeply involved in these issues, and urges further study.

CEA has no objection.

I support this remedy. The Board would have to find a company guilty of refusing to bargain before imposing any penalties. Since this finding is based on a gross showing of a pattern of bad faith, I believe that there

are sufficient safeguards to protect companies. The Department of Labor points out that the strength of this remedy will tend to make the Board very judicious in its use.

Yes_____ No_____ Comment_____

D. Preliminary Injunctions

The Board would be required to seek preliminary injunctions (prior to the issuance of a formal complaint) against companies accused of refusing to bargain after expedited first elections, and against companies accused of illegally discharging an employee during the initial bargaining or organizing phase. This injunction would be issued only after a local investigation by NLRB officials revealed probable cause to suspect these violations had occurred.

Currently the Board is only required to seek injunctions prior to issuance of a complaint in cases of secondary boycotts, unlawful picketing, "hot-cargo" agreements, and coercion to join or bargain with a union. It has discretionary power to seek preliminary injunctions after a complaint is issued in other cases of labor law violation. It has used this discretionary power sparingly.

According to the Department of Labor the intent of existing preliminary injuction authority in the Board was to protect businesses against union practices which had a particularly deleterious impact on their operations. This new authority would recognize that certain unfair employer practices can have an equally deleterious effect on workers and unions.

OMB has no objection to this proposal. Commerce opposes on the ground that the NLRB already has sufficient power to seek injunctive relief. Commerce believes that it is undesirable to make it mandatory for the Board to seek preliminary injunctions in cases in which an employer is accused of refusing to bargain after an expedited election.

Members of the current Board are concerned that this change would increase the workload of the Board but the Chairman has assured us that this will not be unmanageable.

I believe the Board should be reqired to seek injunctive relief in cases of refusal to bargain and unlawful discharge. The requirement that the local Board make "probable cause" and "irreparable damage" findings insures that this provision would not be abused.

Yes_____ No_____ Comment_____

D. Expedited Enforcement of Board Orders

The Board would be required to file its orders with the Appeals Court within 30 days of a decision, if neither party appeals within this time limit. Upon receipt of the Board order by the Court the order would become final.

Presently there is no time limit for the Board to file its orders with the Court. In the past this had lead to some delay. Since this delay has notbeen largely cleared up through administrative action, this proposal will have little practical impact but will act as a statuatory guide to assure that the NLRB acts expeditiously.

No agencies object.

I support.

Yes_____ No_____ Comment_____

III. Other Amendments

A. Foreign Flag Ships

American owned foreign flag ships would be brought under the NLRA jurisdiction, if the ships have more substantial contacts with American ports than with those of the nation of registry.

A 1962 Supreme Court ruling held that the NLRA did not cover workers on foreign flag ships, inthe absence of a specific expresion of Congressional intent. This proposal would overturn that ruling by providing a specific expression of Congessional intent.

OMB opposes this change, citing concerns about international agreements, and enforcement problems. Commerce is sympathetic to the goals of the change, but suggests study of the costs. State is (unofficially) opposed. Charlie Schultze suggests limiting its impact to ships whose home ports and base of operation is the U.S. This would exclude the flags of convenience ships but would catch, for example, the foreign flag fishing fleets based in San Diego. In practice such a distinction would be difficult to enforce and would invite subterfuges to avoid the law. It could also encourage some transfer of ships out of the country.

Applying the NLRA to foreign flag ships is primarily aimed at flag-of-convenience shippers, particularly the oil companies who escape American labor costs by hiring foreign crews to work on their foreign registered vessels. The business community warns that this change may have the impact of forcing multinational companies to divest themselves of their foreign flag ships, rather than reregistering them.

I believe that foreign flag ships should be brought under the NLRA. The danger of transfer outside the United States is small because on modern ships labor costs are generally a small fraction of shipping costs. This change will tend to encourage the repatriation of American shipping to our flag, consistent with our other policies in the maritime area.

Yes_____ No_____ Comment_____

B. Greater Protection for Guards

The proposal would repeal current restrictions on the organization and representation of guards.

Currently guards cannot be represented by a union that includes non-guards, and a guard union cannot be affiliated with an organization that admits employees other than guards. The practical effect of this is to require separate unions solely for guards and to prohibit these unions from affiliating with the AFL-CIO.

The Congressional intent of this provision was to insure that employers would have loyal employees to protect people and property in the event of a strike or labor unrest. Separate unions were thought to protect against a conflict of interest.

The Labor Department's proposal retains the prohibition against a single unit being the bargaining agent for both guards and non-guards at one location. But it would allow guards to join unions which have non-guard members, and it would allow guard unions to affiliate with non-guard unions. This should assure that the concerns prompting the current law are satisfied, without the meat-ax approach now employed.

OMB and CEA object to this change on the grounds that there is no demonstration of harm to guards under the current system. In the absence of such a demonstration they feel that the original justification of the restriction is still valid.

Commerce has no objection.

I support this change. Our proposal provides adequate safeguards against conflicts of interest or disloyalty by guards. It corrects a long-standing inequity which limits the freedom of guards to join unions of their own choosing.

Yes_____ No_____ Comment_____

D. Replacements for Economic Strikers

This proposal would allow workers involved in a first strike over economic issues to displace, at the end of the strike, strike breakers hired to replace them during the strike. This right would apply only to workers striking over an initial collective bargaining agreement.

Currently striking workers have the right to replace strike breakers only if the strike was called or prolonged because of an employers unfair labor practices. In strikes that are purely over economic

issues the employer has the right to hire permanent replacements. This change would remove the danger of job loss for workers who go out on strike to obtain their initial contract.

OMB opposes this change on the ground that an employer should have the right to choose his workforce prior to reaching a first union contract. Commerce calls it a fundamental shift in labor law and asks for more information to analyze the issue.

I support this change proposed by the Labor Department. In negotiations for a first contract the union is usually very weak, with little allegiance from its members. It can seldom risk an economic strike if its members are aware they could lose their jobs. This right to reinstatement would not, of course involve any back pay.

Yes_____ No_____ Comment_____

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

June 30, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze CLS

SUBJECT: Labor Law Reform

I have one comment on Stu Eizenstat's memorandum concerning Labor Law Reform.

Foreign-Flag Ships

I think the memo substantially understates the problem of applying the NLRA to flags-of-convenience shipping. On smaller and older ships labor costs are a significant part of total costs. If this change in the law leads to unionization and a sharp increase in wages to the U.S. level, then these ships will no longer be competitive in world markets. One of two things will happen:

- either the ships will be sold to foreign owners, or
- the pressure for expanded cargo preference or for enlarged construction and operating subsidies will increase.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

cc: Carp ✓
Johnston ✓

June 11, 1977

MEMORANDUM FOR STU EIZENSTAT

FROM: Charlie Schultze CLS

SUBJECT: Labor Law Reform

This is in response to the DOL draft proposal on labor law reform. The proposal is a much better piece of legislation than H.R. 77, the Labor Reform Act of 1977. With the addition of some modifications discussed below, the Administration's package will adequately address most of the crucial labor law grievances of organized labor. That proposal does not take up issues important to the employer, however, and these may be worth consideration.

Suggested changes are discussed in order. All other provisions are acceptable.

Expedited Elections

This proposal may impose unduly restrictive time limits. There are legitimate reasons why some elections require a long period of time to initiate. If, however, the language of the provision were changed from "time limits" to "time targets," enough flexibility would be restored to make this a useful means of expedition.

Equal Assured Opportunity to Address Employees

The intent of this proposal can also be supported, but once again, the language makes it too restrictive. "Equal" opportunity is difficult to define and hence enforce. Instead of equal, we suggest providing "full opportunity" to address employees. This will permit reasonable latitude for the NLRB in deciding whether a union was permitted proper access to workers.

Coverage of Foreign-Flag Ships

This is not entirely acceptable. The imposition of U.S. laws on flagships which are neither based in the United States nor staffed by American crews seems unreasonable. And the language of the proposal would cast a very wide net. This would be analogous to enforcing the NLRA on foreign workers in international branches of U.S. corporations which do business in the United States. It might be possible, however, to apply the NLRA to foreign-flag ships whose home port and base of operation is the United States. That would catch, for example, the San Diego based foreign-flag shipping vessels, but exclude flag-of-convenience ships which are not significantly connected with U.S. ports.

Successorship

It is possible that this proposal involves contract law outside of the labor-management relationships. Since we are not competent in these matters, we are reluctant to make a decision. We would not want, however, to set precedents outside of labor law through the NLRA. I presume that Justice has looked into this problem.

Coverage of Guards

Since guards are permitted to join unions under the present law (if the union is not affiliated with nonguard unions), we do not believe that guards are treatly unfairly. There is a distinction between the duty of guards in the protection of property and safety and the duties of other employees involved in the crucial operation of the firm. This proposal does not recognize this. By allowing the guard union to be affiliated with nonguard unions, the risk of conflicts of interest is too great. We could find no way of acceptably altering this provision.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

xc Camp
Johnston

JUN 22 1977

MEMORANDUM FOR STU EIZENSTAT

FROM Bert Lance

SUBJECT Labor Law Reform

You asked for my comments on the Department of Labor's proposed labor law amendments.

I.A. Increase the size of the National Labor Relations Board from 5 to 7 members. We do not support this proposal. While there has been much discussion of potential need for expanded membership, the Board has demonstrated a capacity to handle more cases faster in recent years. There is still room for improvement as shown by the disparities in productivity among member staffs. The effect of other proposals should also work to reduce some workload.

I.B. Affirmance of Administrative Law Judge decisions in simpler cases by two members. This proposal would have little substantive impact; time delay for routine cases is already short; 61% of ALJ decisions are affirmed now by the Board. We do not support this approach and feel that the certiorari approach of H.R. 77 deserves more serious consideration.

I.C.1. Expedited Elections. The suggested time factors if targets, not limits, would have little substantive effect. Time needed to resolve complex issues will still exceed them. If "limits" is really meant, we object because such arbitrary restrictions take no account of substantive reasons for delay. Assuming targets, not limits, we do not object to the proposal.

I.C.2. Unit determination and voter eligibility by rulemaking. Rulemaking as a general matter is well worth consideration. We do not support it here because we see little likely substantive impact. Everything that could be covered by a rule in this area is probably already covered by a National Labor Relations Board precedent.

I.C.3. Equal assured opportunity to address employees. No objection in principle but we see major definitional and enforcement problems for NLRB and the courts.

II.A. Debarment: No objection, but this is a very narrow sanction. Willful violators should all be subject to some penalty, not just those who happen to seek Federal contracts. There should also be provision for equivalent penalties for willful flagrant union violations of the law.

II.B. Double Backpay. As an economic sanction, it is unlikely to have much effect on employers; as a simpler approach to compensation it has more merit. Large fines might be a better choice for a serious sanction. No objection to the proposal as compensation for employees, if analysis supports this estimate of damage to employee.

II.C. Remedies for refusal to bargain for initial contract. No objection in principle, but the choice of an index and how to use it needs much further analysis.

II.D. Preliminary injunctions against employers. No objection.

II.E. Expedited enforcement of uncontested board orders. No objection.

III.A. Extension of jurisdiction to foreign flag ships. We do not support this proposal. Administering it would be very complex; effects on international maritime agreements need analysis.

III.B. Change restriction on guards. We do not support this proposal. No evidence was offered of harm to guards from the current arrangements. Absent that, the property protection argument is adequate to support present law.

III.C. Replacement for economic strikers. We do not support this proposal; until a contract is signed, the employer has a right to select his workforce.

IV. Successorship. We do not support this proposal. It is too broad in its approach and could set precedents elsewhere regarding contract law and successorship which have not been thoroughly analyzed.

Draft Comments of the Department of Commerce on
Labor Law Reform

General Comment.

The Administration's proposed changes in U.S. labor law are generally constructive. We would recommend, however, that an analysis of the economic impact of the changes be made before the Administration endorses any legislation. Further, the draft amendments, although an improvement over H.R. 77, give the NLRB a substantial amount of discretion in interpreting the intent of the proposed reforms. It may be desirable to write the legislation so that the NLRB will not be given such wide discretion.

Our specific comments follow. In addition, two papers on labor law reform are attached. These papers were presented to Secretary Kreps by members of the Business Roundtable. We believe that these papers deserve careful attention.

Increase in Size of NLRB -- No comment.

Affirmances of Administrative Law Judge Decisions -- No comment.

Expedited Elections.

The draft would continue secret elections which we regard to be of major importance. We are strongly opposed to the use of union authorization cards to determine the labor bargaining agent as is called for in H.R. 77.

Insufficient data are provided to support the deadline dates which would be established in the draft proposal. These deadline dates would determine the time that may elapse between the filing of a petition and the conduct of an election. In view of the data on median delays that are provided in the draft, it would appear that the proposed deadlines may be too short.

Unit Determination by Rulemaking.

We support the general proposal concerning unit determination by NLRB rulemaking. It would appear, however, that the Board ought to be required to promulgate rules for setting out appropriate units for collective bargaining irrespective of the time

requirement that would apply for calling an election. It may have been unintentional to mention the 15-, 25-, and 45-day requirement periods but omit reference to the 75-day requirement.

Equally Assured Opportunity to Address Employees.

The Department of Commerce supports the general principle of assuring employers and unions of equal opportunities to address employees during union organizing efforts. However, we believe that it also is very important that private property rights be maintained. Consequently, we would urge that this latter goal be mentioned specifically in any directive to the NLRB to develop rules concerning equal opportunities to address employees.

Participation in Federal Contracts.

We would point out that a 3-year debarment would constitute a substantial penalty that would hurt not only employers but employees as well. We note that on page 26 the drafters anticipated this argument but answered it only by saying the same type of provision applies in other laws. In our view, an automatic 3-year debarment is objectionable. The stated rationale of the provision is to ensure that a contractor is not able to underbid others because of inadequate labor terms and conditions. Such a goal would be better met by a provision which would remove the debarment upon the firm's coming into compliance with the law. A further inequity in a provision of this kind is that violators who do not participate in Federal contracts would be unaffected. We would prefer no provision on this subject to the extended penalties contained in the draft. On balance we would prefer to see direct penalties that would not be limited to firms contracting with the Government.

We also question whether the Secretary of Labor should be the one to make exceptions to the debarment provision, or whether the exception concerning national interest and sole source considerations should be made by the contracting agency or GSA. At least, the Secretary of Labor should be required to consult with officials more likely to be concerned with the substance of the contract(s) involved.

Double Back Pay -- No comment.

Remedies for Refusal to Bargain for Initial Contracts.

The language at the bottom of page 31 is unclear. At any rate, the proposal would, we believe, give the NLRB too much authority to determine the specific wage rates that are to be paid by an employer. We question whether it is appropriate for the Government to be so extensively involved in this issue.

In its comments on section 8 of H.R. 77, the Business Roundtable has pointed out that some refusals to bargain are merely technical refusals made in order to obtain judicial review of representation issues. To the extent this is true, we feel that the refusal to bargain penalty should not be automatic and should discriminate between substantial and technical violations. This issue should be examined more carefully.

Preliminary Injunctions.

We do not support the proposals concerning preliminary injunctions. It is our opinion that the NLRB already has sufficient power to seek preliminary court injunctions in behalf of employees and unions. We believe that it is undesirable to make it mandatory that the Board seek preliminary injunctions in cases where an employer refuses to bargain after an expedited Board election.

Expedited Enforcement of Board Orders -- No comment.

Foreign Flag Ships.

This Department is concerned about the competitive position of U.S.-flag ships and thus is sympathetic with the objectives of the draft Administration proposal. However, because we also are very concerned about the costs of shipping products to and from the United States, we believe that a careful economic analysis should be made of the likely costs of the proposal. In addition, attention should be given to the general implications of the proposal for competition between ships owned by Americans and those owned by foreigners. It may be that implementation of the proposal would provide foreign-owned ships a competitive advantage over U.S.-owned ships that are now able to compete because of their foreign registry.

Greater Protection for Guards.

While we have no substantive comment on this proposal, we wonder whether the items numbered 1 and 2 at the bottom of page 41 and the top of page 42 are consistent. Does not item 2 cover both 1 and 2?

Replacements for Economic Strikers.

We recognize this as a fundamental shift in labor law. However, we have had an opportunity to consider only one side of the argument and accordingly are unable to analyze the issue adequately.

Successorship.

The Maritime Administration sees no maritime industry need for this amendment and supports, instead, the existing case law and NLRB decisions regarding successorship. To date, the industry has experienced no difficulties with the present law. In fact, all problems regarding successorship have been resolved satisfactorily for all, including the affected workers. Furthermore, it appears that the unions and management are attempting to resolve successorship problems in their collective bargaining agreements, which, in light of existing national labor policy, should be the preferred approach. Consequently, this amendment is not considered necessary for the maritime industry.

More broadly, Commerce regards this as a technical concept of substantial import. We are concerned that, despite the comments on page 49 of the draft, the adoption of the proposal regarding successorship may significantly discourage takeovers of businesses. It appears to us that adopting the proposal might in some cases tend to prevent needed economic adjustments. However, because the term "successorship" is not carefully defined for purposes of the present proposals, it is difficult to judge the economic significance of those proposals.

THE SECRETARY OF THE TREASURY

WASHINGTON 20220

cc: Bill Johnston
Bert Carp

June 20, 1977

MEMORANDUM FOR THE HONORABLE STU EIZENSTAT
ASSISTANT TO THE PRESIDENT
FOR DOMESTIC AFFAIRS AND POLICY

Subject: Labor Law Reform

With reference to the paper you sent me last week outlining proposed reforms in the National Labor Relations Act, the substance is quite removed from Treasury responsibilities and competence. From my own experience in negotiations, however, the proposals seem to be in the nature of desirable improvements in the collective bargaining process, and I would endorse them.

W. Michael Blumenthal

Kolleap Johnston

THE VICE PRESIDENT
WASHINGTON

June 30, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: LABOR LAW REFORM

I would like to strongly support Stu's recommendations on labor law reform.

- o The proposed reforms are relatively modest and primarily tied to enforcement problems under existing law.

- o The business community is highly vocal about problems of bureaucratic inertia and red tape. This package is largely directed at simplifying government procedures and reducing needless and wasteful delay.

- o While there are some tough choices, there is also a strong case on the merits to go with the proposed package.

In working with us on this initiative, labor representatives have been moderate and constructive. If encouraged, I hope that this approach could carry over into other areas.

DOL OBSERVATIONS ON AGENCY COMMENTS

The proposed Labor Law Reform package includes a balanced set of proposals intended to expedite procedures, make sanctions more effective, and eliminate certain inequities under the present law in order to assure that the collective bargaining process continues to operate effectively as a substitute for industrial strife. This memorandum addresses some of the principal issues raised in the comments of OMB, CEA, and Commerce. Many of the issues are dealt with more fully in our attached memorandum analyzing the proposal.

Debarment

OMB and Commerce note that debarment of willful violators only affects government contractors and suggest that direct sanctions be imposed on a broader basis and be directed also against unions.

The current law, however, already contains broad remedies against unions, both under the LMRA and under other civil and criminal laws (e.g., the Hobbs Act, LMRDA, etc). Thus, unions can be sued for any damage to the employer's property; they can be enjoined from engaging in illegal secondary boycotts and required to compensate employers for any financial loss resulting from such illegal activities; etc. The Department considered the possibility of adding civil penalties to the LMRA but rejected this approach as being less responsive to the kinds of deficiencies which exist in the current law. A principle purpose of the proposed debarment sanction is to protect the integrity of the Government's procurement process, and this purpose would not be served by the imposition of civil penalties.

OMB suggests that instead of a flat 3-year debarment period, a firm be relieved of debarment once it comes into compliance. Such an approach would severely undercut the usefulness of the provision. Many unfair labor practices have effects which are, for all practical purposes, irremediable. For example, discriminatory discharges during an organizing campaign can intimidate the remaining employees and cause the campaign to fail. Such firms retain the benefits of their willful violation even if they ultimately agree or are required by a court to reinstate their employees with back pay. The procurement process ought not to support these willful violators, and typically, under other laws (Davis-Bacon Act, Service Contract Act, etc.), the debarment is for a fixed period of three years.

H.R. 77 proposes as an alternative and which OMB suggests has been criticized because ALJ decisions have a reversal rate by the Board, in whole or in part, of 39 percent. Thus, without the explicit Board consideration required by our proposal, it can be expected that disappointed parties will simply appeal to the courts, adding to their current work burden and resulting in appellate review without any preliminary guidance from the Board. This is likely to result in conflicting court decisions which will further unsettle the law in this area.

Increase in Board Size

OMB objects to this proposal, noting that the Board has demonstrated a capacity to handle more cases faster in recent years. Nevertheless, statistics reveal that the Board's annual number of published decisions has risen above 1,600, the agency's total case intake has doubled in the last twelve years, almost passing the 50,000 level, and there is an increasing backlog of unfair labor practice cases pending before the Board. Increasing the size of the Board will allow for increased staffs and for more panels to operate at one time.

Elections

The proposal sets time limits for holding of elections which Chairman Fanning believes are reasonable. The new rule-making requirements should expedite matters and provide greater certainty and predictability. The present multitude of very specific Board unit determination decisions does not afford an adequate means of predicting its future actions. Rulemaking will provide for a clear and rationally organized statement of the principles which the Board will be applying to its unit determinations. It will also limit the extent to which the Board can change its precedents without public notice and opportunity for hearings.

Commerce suggests that the procurement agency rather than the Secretary of Labor should make all decisions on relief from debarment. The procurement agency does, under the proposed bill, determine whether the firm is a sole source and should be relieved with respect to a particular contract. The Secretary of Labor can, in addition, relieve a firm as to all contracts if the national interest so requires. This decision would be made immediately after a determination by the NLRB of violation, even if the violator was not competing for a contract at that time.

Remedies for Refusal to Bargain

Commerce suggests that some refusals to bargain are "technical" and are committed for the purpose of obtaining judicial review of representation issues. While this may be the reason for some refusals to bargain, they nonetheless are in violation of the law and can deprive employees of their rights for a prolonged period. The principal remedy under the current law is an order directing the company to do what it was already required to do -- bargain. Neither the employees nor the union recover for any losses which might result from the employer's unlawful activity. By the time litigation is carried through its many possible steps, a period of years may elapse before the employer is ultimately directed to go to the bargaining table. At this point, the passage of time will have so eroded the union's support in the bargaining unit -- through employee turnover and employee frustration -- that the likelihood of the union's actually concluding a contract with the employer is greatly diminished. Thus, the longer the employer delays getting to the bargaining table with a certified union, the less likely that union is to negotiate any contract at all. In these circumstances, there are many employers who doubtless find it to their advantage to violate the law. Moreover, during the intervening period, the employees have lost the benefits of representation to which they are legally entitled -- the tangible economic gains that ordinarily attend the collective bargaining agreement and the incalculable values of day-to-day representation in the work place. The proposed legislation would establish a fixed measure of damages so that complex litigation can be avoided. However, it provides authority for the Secretary of Labor to designate another index of damages in the future, if that should be deemed appropriate. This approach avoids the charge made against H.R. 77, that the Board would in effect be directing the terms of a new contract.

Equal Assured Opportunities to Address Employees

All agencies support the provision in principle, but CEA and OMB suggest that there are some uncertainties as to meaning which could present enforcement difficulties. Commerce suggests that employers' property rights should be referenced in any mandate to the Board. We believe that the proposed standard provides sufficient guidance to the Board to permit it to spell out the details in its rules. Any such rules will necessarily involve some limitation of employer property rights. Therefore, any statement that employer property rights will be preserved would be at best confusing. We agree, however, that the Board must consider the legitimate interests of employers and employees and should structure its rules to assure equal opportunities to address employees without needless adverse impact on the legitimate interests of employers. However, the Board has in the past shown itself able to balance in other related areas the employer's property rights and interest in preventing interference with production, against the right of employees to make an informed and free choice in an election, e.g., the Board's no-distribution and no-solicitation rules. The Board's rules will, of course, be issued only after the public has had a full opportunity to comment, and they will also be subject to court review.

Replacements for Economic Strikers

OMB opposes this proposal because it believes that the employer should have a right to select its workforce until such time as a contract is signed. The issue which the proposal raises, however, is not the right of an employer to select its workforce, but the rights of employees who have already been selected by the employer to engage in protected activities without being terminated. The law already protects these employees from being discharged because of their strike activity, and the purpose of the proposal is to provide them in addition with a priority at the end of an economic strike, provided that the strike is for an initial contract. Similar protections are already provided to strikers who protest unfair labor practices, but without any time limitation.

Preliminary Injunctions

As noted by Commerce, the Board now has discretionary authority to seek injunctions prior to the adjudication of unfair labor practices. However, as a practical matter, it rarely exercises that authority. In FY 1976, the Board filed only 20 petitions for discretionary 10 (j) injunctions. It generally seeks preliminary relief only where it has been specifically mandated to do so under section 10(l) of the Act. These cases now involve almost exclusively violations committed by unions. The proposal would add to section 10(l) provisions which are designed to protect the essential rights of employees and unions.

Greater Protection of Guards

At present, guards cannot join broad-based national unions which have the resources to launch particularly strong organizational campaigns to encourage union organization. Their choice of unions is very limited. Thus, serious impediments are presented to their organization. Many non-guard employees have duties involving the safeguarding or access to extraordinarily valuable employer plant and equipment. The reasons for the present rigid restrictions appear outdated and should be modified. The proposal would require that the guards be represented by a different local from the one representing the other employees at the plant.

Coverage of Foreign Flagships

CEA expresses concern that the proposal would extent Taft-Hartley to ships with insufficient contacts with the U.S. The proposal addresses this concern and requires that the ship have more extensive contacts with the U.S. than with the country of registry. Accordingly, the CEA analogy does not appear properly applicable. Any coverage based upon a ship's "home port" could be easily evaded by designating a non-U.S. port as the home port.

Summary Affirmances of ALJ Decisions

This proposal should have a substantial impact on the NLRB's workload. The median time for Board processing of ALJ decisions is now 120 days. By permitting the easy cases to be summarily affirmed, the Board could devote its effort to the more expeditious resolution of the difficult cases. This is the approach used by the courts of appeals, and it has been very effective. The certiorari approach which

THE PRESIDENT'S SCHEDULE

Friday - July 1, 1977

8:15 Dr. Zbigniew Brzezinski - The Oval Office.

9:30 Honorable Gerard C. Smith, Ambassador at Large and U.S. Special Representative for Non-Proliferation Matters Designate. (Dr. Zbigniew Brzezinski) - Oval Office.

10:30 Mr. Jody Powell - The Oval Office.

10:45 Mr. Ray Zook. (Mr. Jody Powell). The Oval Office.

10:50 Mr. David Kraslow. (Mr. Jody Powell) - Oval Office.

10:55 Ms. Fay Wells, Storer Broadcasting. (Mr. Jody Powell) - The Oval Office.

11:30 Mr. Charles Schultze - The Oval Office.

1:00 Cong. Sidney R Yates

1:30 (10 min.) Congressman Mike McCormack. (Mr. Frank Moore) - The Oval Office.

2:00 (15 min.) Congressman James F. Lloyd. (Mr. Frank Moore) - The Oval Office.

4:30 Depart South Grounds via Helicopter en route Camp David.

THE WHITE HOUSE

WASHINGTON

July 1, 1977

Stu Eizenstat -

Re: Labor Law Reform

The attached was returned in the President's outbox and is forwarded to you for your information and appropriate action.

Rick Hutcheson

cc: The Vice President
~~Stu Eizenstat~~
Hamilton Jordan
Bob Lipshutz
Jack Watson
Bert Lance
Charlie Schultze

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

June 30, 1977

Stu - I prefer a message endorsing concepts and principles. We can deal with specifics later. I'll have to learn more - J

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu

SUBJECT: Labor Law Reform

BACKGROUND

The AFL-CIO and the U.A.W. have declared that labor law reform is this year's top legislative priority. The unions feel that the 1974 Taft-Hartley Act, and particularly its rules governing union organizing efforts, unfairly favors management.

A bill, H.R. 77, embodying some of the union-backed reforms was introduced by Congressman Thompson in January. During the spring the AFL-CIO drafted a much more extensive bill. After several rounds for consultation with the Labor Department the AFL-CIO agreed to a much more modest set of reforms outlined below.

Three highly controversial proposals were deleted during this round of consultations - a provision to repeal 14B, a provision that would have allowed certification of a union as a bargaining agent without an election in some cases, and a provision that would have required employers taking over a business to honor the old union contract. The AFL-CIO accepted these major compromises, along with a number of lesser ones, because they very much want Administration backing for their bill. Without our active support it is doubtful that any labor law reform bill can pass Congress. Even if the unions do not receive our support, however, they expect to introduce and push this package of reforms very soon. They have asked for a decision on these reforms by July 7.

ANALYSIS

The effect of this set of proposals is generally to streamline the labor laws and to make it easier for unions to organize. Under current law, companies can often use procedural delays to weaken union organizing efforts. The law's remedies are so weak that in some cases outright flaunting of the law is

less costly than collective bargaining and the subsequent wage settlements. The package focuses on procedural changes and speed-ups, strengthened sanctions against employers guilty of unfair labor practices, and coverage expansions.

The business community argues that the changes will tip the current balance in labor-management relations too much toward labor. I disagree. I have met on three occasions with leaders from the Business Roundtable - Chamber of Commerce - National Association of Manufacturers to specifically discuss labor law reform. While, of course, they would prefer to see no change in the labor laws, many of their specific criticisms have been dealt with in our revisions.

A coalition of business groups intends not only to lobby against these proposals, but to introduce their own amendments to the labor laws, presumably ones intended to favor employers. It is likely that this issue will develop into a tough battle in Congress, with final passage delayed until next year, if at all.

Because labor law reform is such a high priority with organized labor, we and the Labor Department have cooperated closely with the unions in the development of this package. At the same time the Labor Department has tried to limit the proposals to measures that remedy actual inequities in the law, as opposed to simply shifting its balance toward labor.

Prior to submitting these proposals from the Labor Department to you I have circulated them to the Departments of Commerce, Justice and Treasury, and to CEA, OMB and the Vice President. ~~Their comments are attached, and~~ the analysis below reflects their concerns.

OPTIONS

I believe that there are three possible strategies:

1) Neutrality We could take a hands off attitude on the grounds that it is not worth investing our political capital in this potentially bloody battle. The unions would consider this tantamount to opposition.

2) A Labor Law Reform Message As in our airline message, we could endorse the concepts and principles of labor law reform without detailing them or preparing legislative language.

3) A Message Together with an Administration Bill The Vice President, Ray Marshall and I support this course. If we adopt this course we should be able to extract a much greater measure of cooperation from the AFL-CIO over the course of the next year.

It is unlikely that the AFL-CIO will accept a severely pared down Administration bill, since they have conceded so much already in their negotiations with the Labor Department. Therefore, if you cannot support most of this package, the message or neutrality strategy is probably preferable. If you agree with most of these reforms, however, then an Administration bill is the option with the most political benefit.

It is difficult to overestimate the importance of this matter in terms of our future relationship with organized labor. Because of budget constraints and fiscal considerations, we will be unable to satisfy their desires in many areas requiring expenditure of government funds. This is an issue without adverse budget considerations, which the unions very much want. I think it can help cement our relations for a good while.

Following are the "bare bones" provisions now remaining in the Labor Department's package of amendments to the National Labor Relations Act (NLRA). Secretary Marshall strongly recommends all of these remaining proposals.

PROPOSED REFORMS

Not all agencies commented on each of the reforms. All specific comments of the agencies surveyed are reflected. The Vice President, the Secretary of the Treasury and the Attorney General expressed non-specific approval of the whole package.

I. Expedited Procedures

A. Board Membership

The number of board members would be increased from five to seven (budget costs $2 million). This should enable the board to better handle its growing back log of cases along with the substantial additional powers proposed in these reforms. Since the Board divides its work among small panels of its members, more members would allow more panels to operate. The American Bar Association has recommended an increase to 9 members.

OMB opposes this increase on the grounds that the Board may be able to increase its productivity with better utilization of existing resources.

Commerce and CEA do not oppose this change. DOL supports it.

I believe that the Board should be increased to 7 members.

Yes ✓ No_____ Comment_____ J

B. Summary Affirmance of Administrative Law Judge Decisions

The decrees of the Administrative Law Judges (ALJs) would be affirmed in simpler cases by 2-member panels of the Board, rather than by the current three-member panels. Currently, the 94 ALJs across the country make all initial decisions regarding complaints of unfair labor practices. These decisions are in the form of recommendations to the Board in Washington, and do not become final until the Board acts on them. The Board takes an average of 120 days to review these decisions, resolving about 25% in less than 109 days, but taking more than 221 days to decide on the most complex 25%. About 2/5 of all ALJ decisions are totally or partially reversed by the Board. By allowing the Board to delegate its decision making authority to a greater degree, this reform aims at speeding up the review process. This

procedure is consistent with those used by the Courts of Appeal in their summary affirmance procedure. The NLRB could determine which more complex cases would be heard by the full Board.

OMB does not support this change on the grounds that it would have little substantial impact. They prefer the procedure of allowing the ALJ's ruling to become final unless the Board grants review. This procedure was embodied in the H.R. 77 but was modified by the Labor Department in the current plan because of the high rate of reversals of ALJ decisions by the Board. The business community strongly objected to delegating as much authority to the ALJs as OMB proposes. Thus the proposal as it is, is a more moderate approach than reflected in H.R. 77.

CEA and Commerce have no objection to the 2-member panel affirmation. DOL supports this change.

I support the 2-member panel approach.

Yes ✓ No_____ Comment_____

C. Elections

1) Time Limits

The Labor Department and our staff succeeded in moving the AFL-CIO off of its original position that no election would be necessary, upon a showing of certain evidence that a majority of workers wished to join a union.

As the provision now reads, in cases in which a majority of employees in an appropriate unit have signed authorization cards, an election would be required within 15 days of the filing of a petition with the Board (25 days for units larger than 250 employees.) All other elections would be required within 45 days, except for those of "exceptional novelty or complexity" which would have to be held within 75 days. In complex cases in which the Board could not resolve the issues by the time of the election, the election would be held anyway. If the subsequent decision changed the unit or eligibility rules under which the election was held a new election would be called.

Currently the median time for holding an uncontested election is 56 days, while the median for contested elections in which the issues are resolved at the regional level is 75 days. These two kinds of cases comprise 99% of all elections. For the 1% of cases in which the issues must be resolved by the Board, the median time before an election is 275 days.

The Labor Department argues that delay almost always works in favor of an employer resisting unionization. They believe that under current law employers can unfairly delay elections by contesting such things as the appropriateness of the unit or the eligibility of certain employees to vote in the election. Time limits would eliminate the incentive to frivolously contest elections.

The Chairman of the NLRB has indicated that the proposed time limits are feasible.

CEA, OMB and Commerce all feel that the time limits may be too inflexible. They propose targets rather than limits.

I recommend that some specific time limits be adopted. To satisfy concerns that the limits are too restrictive we could consider a modest lengthening of the periods. But the principle that an election should be held after a fixed time is important and I support its inclusion in this legislation.

Yes ✓ No _____ Comment principle ok J

2) Unit Determination by Rule-Making

The legislation would instruct the Board to promulgate rules governing appropriate units for collective bargaining and for eligibility to vote in union elections.

Currently the Board resolves most of these issues on a case-by-case basis. Greater codification of the rules could cut down on delay and reduce the uncertainties in the law. This would be consistent with the changes other agencies have been encouraged to adopt, moving from time-consuming, case-by-case adjudicative decision-making to more clearly defined and speedier rule-making.

OMB does not support this change because they believe that everything that could be covered by a rule in this area is already covered by an NLRB precedent. The Department of Labor feels, however, the NLRB precedents are inconsistently applied, and that rules would insure fairer and faster application of Board policies. Commerce supports rulemaking, but believes that it should not be tied to time limits for elections. (Commerce's concern has been dealt with in the most recent draft).

I support this rulemaking procedure.

Yes ✓ No_____ Comment_____

3) Equal Opportunity to Address Employees

The Board would be instructed to issue regulations requiring that employers and employees have "equal assured opportunity" to address all employees during a union's organizing efforts. Depending on how the Board wrote these regulations, this could grant unions, in some cases, rights to go on company property to make their case.

Currently, unions seeking to address employees are generally limited to calling or visiting them in their homes, or to distributing literature outside plant gates. Employers have much greater access to employees, since they can make their case on company time and company property.

The AFL-CIO had proposed that the legislation itself grant equal rights of access to unions. Our procedure will give the Board the power to define the appropriate rules to govern union rights.

OMB supports this change in principle, but warns of definitional and enforcement problems with an "equal" standard. Schultze agrees with the principle but suggests "full opportunity" rather than "equal". It should be noted that in cases in which an employer chooses not to make any case to his employees prior to a union election, a "full" standard might entail broader union rights than "equal".

Commerce supports this change in principle, but believes that it is very important to maintain private property rights. They urge that any legislative instruction to the Board specifically mention these property rights. The Department of Labor feels that the issue is not one of property rights versus union rights. They point out that under an "equal opportunity" standard that an employer could not be required to grant access to unions unless he used company time or property to argue against unionization. The controlling factor would be a decision by the employer.

This will be one of the most controversial aspects of this package. Unions should have a fair chance to make their case, but employers obviously also have rights to control their operations and to limit access to their facilities. Therefore we recommend that the Board be instructed to promulgate rules granting unions "equal assured opportunity to address employees prior to an election consistent with the employer's right to the reasonably unimpeded operation of his business." Our latest conversations with the AFL-CIO indicate that they would be willing to accept such a modification.

This will be the postcard campaign theme

Yes ? No ? Comment Property rights ? can kill entire bill

II. Strengthened Remedies Against Unfair Employer Labor Practices

A. Participation in Federal Contracts

Employers guilty of willfully violating a Board order enforced by a court decree would be debarred from participating in new federal contracts for three years. The Secretary of Labor could exempt a company from this penalty if he found it was in the national interest, or if the company was the sole source of a needed product. This remedy would apply only to cases involving coercion of employees or discrimination based on union membership. Currently there is no such provision in the law.

OMB supports this provision but argues that similar sanctions (i.e., large fines) should also apply to firms without federal contracts and to unions guilty of unfair labor practices. The Department of Labor argues that fines for other violators are inconsistent with the intent of this provision, which is simply to insure that federal dollars do not go to those who willfully

violate the nations laws. They point out that this sanction is used to enforce other federal laws (such as Davis-Bacon, Service Contracts, OFCC, etc.).

Commerce finds an automatic 3 year debarment objectionable. They would prefer to see all firms subject to penalties, and they believe that debarment should be lifted when a firm comes into compliance.

The Department of Labor argues that lifting the sanctions when a firm comes into compliance would allow a firm to circumvent the law. For example, a firm could fire workers for union activities and then later, when the NLRB threatened to cut off federal contracts, it could simply rehire them. The damage would already have been done however.

I agree with the Department of Labor that a 3 year debarment should be written into the law. If this period (which is standard in other debarment laws) is considered to long we could agree to compromise on a somewhat shorter period.

Yes ✓ No_____ Comment_____ I

B. Double Back Pay

Employees unlawfully discharged for union activity during the initial organizing period would be entitled to reinstatement and double back pay. This would not apply to any subsequent period.

Currently the Board has the authority to require reinstatement and back pay awards, but this award is based on back pay less the employee's interim earnings (the "mitigation of damage" rule). The result is lengthy proceedings to determine the amount of damages and interim earnings and an incentive for companies to contest and minimize these awards. Typically these back pay awards are quite small and are often delayed for years.

Double back pay computed without offsetting factors would greatly simplify and streamline this procedure.

OMB does not object to this change, if analysis supports this estimate of damages to the employee.

Commerce has no comment.

I support this change.

Yes ✓ No_____ Comment_____ I

C. Remedies for Refusal to Bargain for First Contract

The NLRA would be amended to authorize the Board to require companies found guilty of refusing to bargain in good faith for a first contract to recompense employees for the presumed loss of benefits during the unfair delay. This compensation would be the difference between the wages and fringes received by the employees during the delay and these benefits multiplied by the average percentage increase in all labor contract settlements signed during the delay, as measured by a standard BLS index. For example, if first contract settlements had averaged 8% in the period of delay, then the employer could be required to pay his employees a bonus of 8% of the pay they earned during the delay.

Currently employers in some cases simply refuse to bargain after the union wins an election, and then litigate the subsequent "order to bargain" issued by the Board. They prefer the legal costs to the higher settlements that might result from a collective bargaining agreement. This provision takes away this incentive to delay by litigation.

OMB has no objection in principle but wants to further analyze the choice of index and how it would be used. Commerce believes that the remedy gives the Board too much authority to determine wage rates. In practice the distinction between a rigid but legal bargaining stance and an illegal pattern of refusing to bargain is based partly on the Board's judgment. Commerce questions whether the government should be so deeply involved in these issues, and urges further study.

CEA has no objection.

I support this remedy. The Board would have to find a company guilty of refusing to bargain before imposing any penalties. Since this finding is based on a gross showing of a pattern of bad faith, I believe that there

are sufficient safeguards to protect companies. The Department of Labor points out that the strength of this remedy will tend to make the Board very judicious in its use.

Yes_____ No_____ Comment ?

D. Preliminary Injunctions

The Board would be required to seek preliminary injunctions (prior to the issuance of a formal complaint) against companies accused of refusing to bargain after expedited first elections, and against companies accused of illegally discharging an employee during the initial bargaining or organizing phase. This injunction would be issued only after a local investigation by NLRB officials revealed probable cause to suspect these violations had occurred.

Currently the Board is only required to seek injunctions prior to issuance of a complaint in cases of secondary boycotts, unlawful picketing, "hot-cargo" agreements, and coercion to join or bargain with a union. It has discretionary power to seek preliminary injunctions after a complaint is issued in other cases of labor law violation. It has used this discretionary power sparingly.

According to the Department of Labor the intent of existing preliminary injuction authority in the Board is to protect businesses against union practices which have a particularly deleterious impact on their operations. This new authority would recognize that certain unfair employer practices can have an equally deleterious effect on workers and unions.

OMB has no objection to this proposal. Commerce opposes on the ground that the NLRB already has sufficient power to seek injunctive relief. Commerce believes that it is undesirable to make it mandatory for the Board to seek preliminary injunctions in cases in which an employer is accused of refusing to bargain after an expedited election.

Members of the current Board are concerned that this change would increase the workload of the Board but the Chairman has assured us that this will not be unmanageable.

I believe the Board should be required to seek injunctive relief in cases of refusal to bargain and unlawful discharge. The requirement that the local Board make "probable cause" and "irreparable damage" findings insures that this provision would not be abused.

Yes_____ No_____ Comment ?

D. Expedited Enforcement of Board Orders

The Board would be required to file its orders with the Appeals Court within 30 days of a decision, if neither party appeals within this time limit. Upon receipt of the Board order by the Court the order would become final.

Presently there is no time limit for the Board to file its orders with the Court. In the past this had lead to some delay. Since this delay has not been largely cleared up through administrative action, this proposal will have little practical impact but will act as a statuatory guide to assure that the NLRB acts expeditiously.

No agencies object.

I support.

Yes ✓ No_____ Comment_____ F

III. Other Amendments

A. Foreign Flag Ships

American owned foreign flag ships would be brought under the NLRA jurisdiction, if the ships have more substantial contacts with American ports than with those of the nation of registry.

A 1962 Supreme Court ruling held that the NLRA did not cover workers on foreign flag ships, in the absence of a specific expression of Congressional intent. This proposal would overturn that ruling by providing a specific expression of Congessional intent.

OMB opposes this change, citing concerns about international agreements, and enforcement problems. Commerce is sympathetic to the goals of the change, but suggests study of the costs. State is (unofficially) opposed. Charlie Schultze suggests limiting its impact to ships whose home ports and base of operation is the U.S. This would exclude the flags of convenience ships but would catch, for example, the foreign flag fishing fleets based in San Diego. In practice such a distinction would be difficult to enforce and would invite subterfuges to avoid the law. It could also encourage some transfer of ships out of the country.

Applying the NLRA to foreign flag ships is primarily aimed at flag-of-convenience shippers, particularly the oil companies who escape American labor costs by hiring foreign crews to work on their foreign registered vessels. The business community warns that this change may have the impact of forcing multinational companies to divest themselves of their foreign flag ships, rather than reregistering them.

I believe that foreign flag ships should be brought under the NLRA. The danger of transfer outside the United States is small because on modern ships labor costs are generally a small fraction of shipping costs. This change will tend to encourage the repatriation of American shipping to our flag, consistent with our other policies in the maritime area.

Yes_____ No_____ Comment ?

B. Greater Protection for Guards

The proposal would repeal current restrictions on the organization and representation of guards.

Currently guards cannot be represented by a union that includes non-guards, and a guard union cannot be affiliated with an organization that admits employees other than guards. The practical effect of this is to require separate unions solely for guards and to prohibit these unions from affiliating with the AFL-CIO.

The Congressional intent of this provision was to insure that employers would have loyal employees to protect people and property in the event of a strike or labor unrest. Separate unions were thought to protect against a conflict of interest.

The Labor Department's proposal retains the prohibition against a single unit being the bargaining agent for both guards and non-guards at one location. But it would allow guards to join unions which have non-guard members, and it would allow guard unions to affiliate with non-guard unions. This should assure that the concerns prompting the current law are satisfied, without the meat-ax approach now employed.

OMB and CEA object to this change on the grounds that there is no demonstration of harm to guards under the current system. In the absence of such a demonstration they feel that the original justification of the restriction is still valid.

Commerce has no objection.

I support this change. Our proposal provides adequate safeguards against conflicts of interest or disloyalty by guards. It corrects a long-standing inequity which limits the freedom of guards to join unions of their own choosing.

Yes_____ No_____ Comment ?

D. Replacements for Economic Strikers

This proposal would allow workers involved in a first strike over economic issues to displace, at the end of the strike, strike breakers hired to replace them during the strike. This right would apply only to workers striking over an initial collective bargaining agreement.

Currently striking workers have the right to replace strike breakers only if the strike was called or prolonged because of an employer's unfair labor practices. In strikes that are purely over economic

issues the employer has the right to hire permanent replacements. This change would remove the danger of job loss for workers who go out on strike to obtain their initial contract.

OMB opposes this change on the ground that an employer should have the right to choose his workforce prior to reaching a first union contract. Commerce calls it a fundamental shift in labor law and asks for more information to analyze the issue.

I support this change proposed by the Labor Department. In negotiations for a first contract the union is usually very weak, with little allegiance from its members. It can seldom risk an economic strike if its members are aware they could lose their jobs. This right to reinstatement would not, of course involve any back pay.

Yes_____ No_____ Comment ?

THE WHITE HOUSE

WASHINGTON

ACTION	FYI	
	X	MONDALE
		COSTANZA
	X	EIZENSTAT
	X	JORDAN
	X	LIPSHUTZ
		MOORE
		POWELL
	X	WATSON

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		GAMMILL
		HARDEN
		HOYT
		HUTCHESON
		JAGODA
		KING

		KRAFT
	X	LANCE
		LINDER
		MITCHELL
		POSTON
		PRESS
		B. RAINWATER
		SCHLESINGER
		SCHNEIDERS
	X	SCHULTZE
		SIEGEL
		SMITH
		STRAUSS
		WELLS
		VOORDE

THE WHITE HOUSE
WASHINGTON

Mr. President:

Comments from Hamilton and the Vice President, endorsing Stu's recommendations, and from Jack, suggesting that you meet with your advisors before making a decision, are attached.

Schultze comments that Stu's memo substantially understates the problem of applying NLRA to flags-of-convenience shipping. Labor costs are a significant part of total costs on smaller and older ships. If changes in the law lead to unionization and sharp increases in wages to the US level, these ships will no longer be competitive. Thus, there would either be pressure for expanded cargo preference or subsidies, or the ships will be sold to foreign owners.

Although the OMB comments on the bill are mostly negative, Hamilton's memo includes the note that "Bert Lance told me that he supports the concept on this particular bill."

Rick

June 29, 1977

TO: PRESIDENT CARTER

FROM: HAMILTON JORDAN H.J.

I hope you will adopt Stu's recommendation, and send an Administration labor law reform bill to Congress.

My reasons are as follows:

1. The compromise proposals developed by Stu and Ray all focus on removing inequities in the administration of the labor laws. This is a consistent position for the Carter Administration to take.

2. Most of the labor issues we have faced to date have been narrow special interest issues (international trade, situs picketing, cargo preference, etc.) which the AFL-CIO

supported because the issues were very important to a few unions within the federation.

In the case of labor law reform, however, there is strong broad support, particularly from the "progressive" unions - the UAW, the Machinists, CWA, etc. These unions represent our real base of support in labor - it is important that we honor their priorities.

3. The labor law reform negotiations with labor (Ray and Stu on one side, Tom Donahue and Steve Schlossberg of the UAW on the other) have been constructive and reasonable. In this case, labor has lowered its expectations ahead of time, rather than setting unreasonable objectives and then publicly blaming us for not meeting them.

By supporting labor on this issue, we can encourage a reasonable approach on future issues.

4. I believe your decision on this issue will have a significant bearing on the UAW's decision to reaffiliate with the AFL-CIO. Reaffiliation is in our best interest, because it will bring fresh, progressive and reasonable ideas into an organization (the AFL-CIO) which is now stale and obstreperous.

As you know, Doug Fraser is having trouble convincing his membership that reaffiliation is a good idea. One persistent member argument against the idea is that the UAW has more influence with the Administration than does the AFL-CIO.

A unified labor law reform effort - with the AFL-CIO, UAW, and the Administration working together - would improve the climate for reaffiliation.

In short, a labor law reform bill as proposed by Stu and Ray is consistent with our own approach to government, and also holds the promise of improving substantially our relations with labor on terms which we can accept.

P.S. Bert Lance told me that he supports the concept and this particular bill.

THE VICE PRESIDENT
WASHINGTON

June 30, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: LABOR LAW REFORM

I would like to strongly support Stu's recommendations on labor law reform.

- o The proposed reforms are relatively modest and primarily tied to enforcement problems under existing law.

- o The business community is highly vocal about problems of bureaucratic inertia and red tape. This package is largely directed at simplifying government procedures and reducing needless and wasteful delay.

- o While there are some tough choices, there is also a strong case on the merits to go with the proposed package.

In working with us on this initiative, labor representatives have been moderate and constructive. If encouraged, I hope that this approach could carry over into other areas.

THE WHITE HOUSE

WASHINGTON

June 30, 1977

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson
Bruce Kirschenbaum

SUBJECT: EIZENSTAT MEMORANDUM ON LABOR LAW REFORM

I. Because Stu's memorandum contains so many major substantive issues, many of which have extensive ramifications, I think it's important for you to meet with Stu, relevant Cabinet members and other White House staff before deciding some of the issues presented. Several of the proposals raise questions which I am sure could be answered in a meeting with Stu, Landon, Ray Marshall and others. The imminence of next week's AFL-CIO meeting makes exchange of further memoranda impractical.

Some of the questions that occur to me, for example, are:

(a) What are the legal effects (particularly in terms of appellate process) of increasing the delegation of authority to the 2-member panels? What are the criteria which determine which cases should be so delegated?

(b) In terms of disbarment from federal contracts, isn't it likely that some businesses will forego small government contracts in order to get around labor laws they do not like? Aren't those companies that have federal tax preferences, but no federal contracts, still using "federal" money to sanction violation? How can we excuse one violation and not another solely on the basis of federal contracts?

(c) Expanding the number of National Labor Relations Board members will not help much unless NLRB staff is expanded, particularly if the field offices are going to make reasonable determinations on preliminary injunctions as suggested. How many more employees for NLRB will be required and at what cost?

II. Since the AFL-CIO is meeting next week to consolidate their own position on the subject of labor law reform, we don't have much time to decide how to present our positions on these issues publicly. As I read the reform proposals, there is a definite tilt in favor of labor, with the consequence that we need to lay some political groundwork with business. Moreover, we will be going public with our position on these matters while Congress is out of session, and we need to know how the major labor proponents on the Hill will react publicly to these proposals, point by point.

III. If you decide to go with the major aspects of the reform package, many of which are extremely important to Labor, I suggest that we work out a strategy for obtaining concessions from Labor on other important issues, e.g., minimum wage, tariff policies, anti-inflation policy, etc.

For all the above reasons, I think that a meeting on the subject with your principal advisers would be extremely helpful.

cc: Stu Eizenstat
Landon Butler

Stu

COMPARISON OF LABOR LAW REFORM BILLS

	H. R. 77*	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
I. EXPEDITED PROCEDURES			
A. Elections			
1. Expedition of:			
(A) Where a majority of the employees in an appropriate unit have designated the union as their representative	No election necessary if 55% are members of the unit.	No election necessary if a majority paid dues or fees of at least $2.00.	An election but on an expedited basis (15 to 25 days depending on the size of the unit).
(B) Where there is a 30% showing of interest by employees in an appropriate unit (which is one of the present prerequisites for obtaining an election)	An election in 45 days, with the proviso that issues regarding the appropriateness of the bargaining unit or voter eligibility be resolved after the election and a new election held if necessary.	An election is 45, 75 or 100 days, depending on the complexity of the issues involved. These time limits are accompanied by a requirement that the Board promulgate rules for determining appropriate bargaining units, and thereby enable the resolution of such issues before the election is held.	An election in 45 or 75 days, depending on the complexity of the issues involved. The Board would also be required to promulgate rules, including in addition rules concerning voter eligibility agreements and rules declaring appropriate units. Chairman Fannin believes that these time limits are reasonable.

* It should be noted that H.R. 77 is not a bill for total labor law reform, but is directed solely to the issues of expediting Board procedures and making Board remedies more adequate. Other bills were to be introduced to deal with additional issues. The AFL-CIO and Administration proposals are comprehensive reform bills.

	H. R. 77	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
2. Judicial Review of Rules Concerning Unit Determinations	No provision because no direction to promulgate such rules.	Rules can be reviewed only in an unfair labor practice proceeding, which is typically the means for reviewing individual unit determinations by the Board; the scope of review is also comparable to that presently existing for Board determinations.	Same as AFL-CIO proposal.
3. Requirements for Election Campaigns			
(A) Opportunities of union to address employees during campaign	No provision	Union given equal opportunity to address employees on employer's premises during period after direction of election.	Board promulgates rules to assure that during an appropriate period, and subject to reasonable conditions, unions have equal assured opportunities to address employees.
(B) Misrepresentation within 2 days of election	No provision	Prohibited, where knowingly false or in reckless disregard of truth.	No provision
B. Increase Size of Board	No provision	Increase to 9 members. Retain five-year terms.	Increase to 7 members. Seven-year terms.

	H. R. 77	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
C. Service of Board Member on Expiration of Term	Provides that Board Member shall continue to serve until successor is appointed and finalized.	No provision	No provision
D. Board Review of ALJ Decisions	Board delegates final decision-making authority to ALJ's, subject to discretionary review.	All cases heard by full Board or Board panel, as at present, except that Board delegates cases involving no novel questions to quorum of a Board Panel under expedited procedures.	Similar, except Board determines those cases appropriate for expedited procedures.
II. REMEDIES AND SANCTIONS			
A. Special damages for discrimination against employees based on union membership or activities	Court action for treble damages in all cases, in addition to regular fair labor practice remedy. Employee earnings deducted in computing damages.	Double-damages for discrimination occurring while union is seeking recognition and 4 years after recognition. Employee wages not deducted. Private court action allowed by H.R. 77 would be eliminated.	Similar, except special remedy is limited to period while union is seeking recognition and before first collective bargaining agreement.
B. Make-Whole remedies for refusals to bargain	Covers all refusals to bargain. Specific measure of damages unstated.	Covers refusals to bargain for initial contract. Specific measure of damages unstated.	Covers refusals to bargain for initial contract. Measure of damages specified.

	H. R. 77	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
C. Participation of violators in Federal contracts	First willful or flagrant ULP or commission of pattern or practice of violations designed to coerce employees in exercise of rights to organize leads to 3-year debarment. Sole-source situations excluded.	Violation of any Board final order by service or supply contractors subjects violator to cancellation and debarment for 3 years. Relief from debarment as specified in Davis-Bacon and Walsh-Healey Acts.	Willful violation of Board Order involving discrimination or deprivation of organizational rights subjects violator to debarment, unless the Secretary determines that the national interest requires otherwise or procurement agency determines contractor to be sole source. No cancellation of contract.
D. Injunctions pending adjudication of ULP cases by Board	Sets standards for Board in seeking discretionary injunctions.	Adds to present list of ULP's where mandatory injunctions must be sought; discrimination occurring while seeking recognition and 4 years thereafter, and refusals to bargain.	Similar, except that with respect to discrimination, period is limited to that preceding 1st agreement, and employee must have lost job because of the discrimination.
E. Expedited Enforcement of Board Orders	Provides that all Board Orders automatically are sent to court for enforcement, and will be automatically enforced unless there is objection. If the Board's Order is contested, the Court will enforce it pending review, unless the party convinces the court otherwise.	Similar, except that there is no special provision for enforcing Board's Order pending review.	No provision requiring automatic transmission of Board Order to Court for enforcement. Provision states that if Board seeks court enforcement, a party may raise no objection to any issue unless it has timely sought court review of that issue, as it now has the right to do.

	H. R. 77	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
F. Require General Counsel of Board to issue complaints when ULP charges have been made	Requires such complaints to be issued unless there is no material fact in issue or the charge fails to state an unfair labor practice.	No provision	No provision
III. LIABILITY OF EMPLOYERS AND UNIONS			
A. Liability of employers for acts and obligations of jointly-owned enterprise.	No provision	Provides that for the purposes of Taft-Hartley, commonly owned firms will be treated as one person.	No provision
B. Successorship	No provision	Requires that successor employers assume the collective bargaining agreements of predecessors. Expands definition of "successor" to provide that continuity of the employer's workforce will not be controlling.	~~Similar, except that continuity of workforce will not be evidence~~. No provision
C. International union liability for acts of local	No provision	Limits liability under any contract or law to the same liability that a corporation would have for violations by a wholly-owned subsidiary.	No provision

	H. R. 77	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
D. Limitations on certain civil damage suits against unions	No provision	Removes several grounds in present law for suing unions directly for certain ULP violations in addition to the regular Board remedy. In remaining instance, removes rights of the primary employer, who is a party to the dispute, to sue.	No provision
E. Limitations on actions against unions for breach of its duty of fair representation	No provision	Imposes major restrictions on legal recourse of employees in these cases.	No provision
IV. COVERAGE QUESTIONS			
A. Coverage of American-owned foreign flag-ships	No provision	Covers these ships if they entered U. S. ports twice in the immediately preceding 12 months.	Covers these ships if they had more substantial contacts with the U. S. than with the nation of registry.
B. Replacements for economic strikers	No provision	Denies all the protections of the Act to any person who replaced an economic striker during a strike for a first or second collective bargaining agreement.	Limits the rights of replacements during or at the conclusion of a strike for a first collective bargaining agreement for the purposes of determining comparative rights with a striking worker.

	H. R. 77	AFL-CIO PROPOSAL	PROPOSED ADMINISTRATION BILL
C. Status of Guards	No provision	Repeals all of the Act's present restrictions on the organization of guards.	Retains present restriction that guards be in a separate unit and that a union cannot represent guards if it represents non-guard employees of the same employer at the same location.
V. REPEAL OF SECTION 14(b)	No provision	Repeals 14(b), which permits state "right-to-work" laws	No provision